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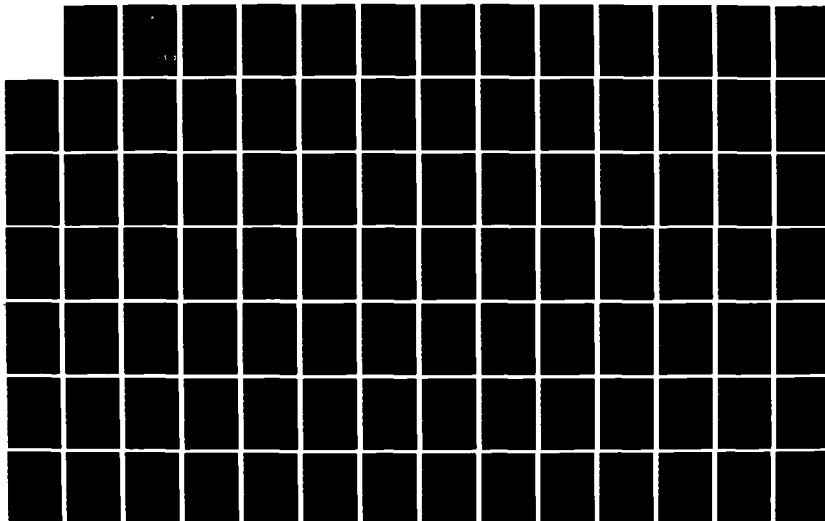
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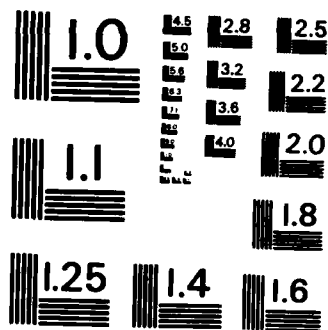
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NATIONAL EMERGENCY/FULL MOBILIZATION

THESIS

Curtis D. Britt
Captain, USAF

John L. Miles
Captain, USAF

AFIT/GLM/LSP/85S-8

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CONTRACTING UNDER CONDITIONS OF NATIONAL
EMERGENCY/FULL MOBILIZATION

THESIS

Presented to the Faculty of the School of Systems and Logistics
of the Air Force Institute of Technology

Air University

In Partial Fulfillment of the
Requirements for the Degree of
Master of Science in Logistics Management

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September 1985

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Preface

The impetus for this research was a distinct lack of consolidated material dealing with the contracting process in an emergency environment. Seeing what we felt was a valid need, we debated all that should be done, and concluded that the establishment of a data base for future use would be our contribution.

We caution the reader on two points. First, we are laymen in the acquisition arena, not lawyers, and this research study has been pursued and written from that perspective. Second, this research was a subjective effort. While it represents many exhaustive hours of reading United States Code and federal regulations, it is in one sense a first draft. Doubtless, there are many qualified individuals who will find the occasional omission, or would debate the findings. Still, it is a beginning, which is more than we had before.

In the months of researching and writing this thesis, we have incurred the encouragement, assistance, constructive criticism, and occasional wrath of our faculty advisor, Lt Col Gary Delaney, for which we are now thankful.

We also wish to thank Dr. J. O. Mahoy for much needed assistance in deciphering the intricacies of the United States Code.

Finally, we wish to thank our wives for the patience they never failed to show and the sacrifices they willingly endured to see this effort to its fruition.

— Curtis D. Britt

— John L. Miles

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Abstract

The declaration of a national emergency by the President or Congress will undoubtedly create urgent demands for supplies and services to be provided by the Department of Defense acquisition community. It has become apparent that DOD contracting functions may be incapable of expediting the contracting process to meet the demand. Large numbers of statutes, regulations, and directives contain restrictions that may impede the contracting process, but the nature and extent of these restrictions have never been consolidated into a single body of material.

The objectives of this research effort were:

(1) to identify any statutes, regulations, or directives which might impede the contracting process, in the event of a national emergency/full mobilization; (2) to determine the existence of any waivers to the restrictions identified; and (3) to establish the level of approval of any existing waivers.

A subjective review of United States Code, the Federal Acquisition Regulation, and Defense and Air Force acquisition-related directives and regulations was accomplished. A total of 126 provisions were identified as

potential impediments to the contracting process, requiring waiver approvals ranging from Congress to the contracting officer, if a waiver was found to exist. Based on these findings, several recommendations were made pertaining to Department of Defense contracting contingency planning.

CONTRACTING UNDER CONDITIONS OF NATIONAL
EMERGENCY/FULL MOBILIZATION

I. Introduction

The objective of the United States Armed Forces is to provide for the defense and security of the United States and its allies. A major factor in the successful accomplishment of this primary mission is the ability to contract for and supply combat operational units with repair parts and spares to ensure a mission-ready capability. The Air Force Logistics Command (AFLC) has the primary responsibility for supplying repair parts, spares, and goods and services to support the weapon systems of the United States and its worldwide allies. AFLC contracting organizations spent more than \$13 billion in fiscal year 1984 with private industry to support the operational commands and will spend greater amounts in future years (20).

With delivery lead times for Air Force critical material increasing each year, Air Force contracting organizations must ensure they do not extend acquisition lead time by using improper or inappropriate practices for any particular acquisition situation. In 1981, the Air Force Business Research Management Center (AFBRMC) was informed by

Department of Defense (DOD) contractors and in-house acquisition managers that there was doubt Air Force contracting organizations could handle an immediate increase in work load brought about by a declaration of national emergency. At the present time, contracting laws, regulations, and procedures may not be adequate to process large increases in operational requirements incurred as a result of a declaration of national emergency or mobilization. As a result of the comments made by the various DOD and civilian contract managers, AFBMRC conducted a preliminary literature review and interview investigation. Its research concluded that "DOD's contracting and acquisition process is unprepared and inadequate if a national emergency or mobilization were declared today" (17:1). Air Force operational units are heavily dependent on AFLC and ultimately the civilian sector in their attainment of combat sustainability. It is imperative, therefore, that the contracting process be able to adapt to any possible military conflict situation, to assure a continuous flow of materials to those operational units.

The contracting process is the business interface between the military and civilian community. In periods of peace and war, it is charged with ensuring the tools of freedom are readily available at the lowest possible expense to all parties. In a study for the United States Army War College, Colonel Daniel M. Wilson noted:

In the past and in the future, contracting represents the key activity that allows plans to be transformed into operational assets. Contracting received a significant amount of public and political attention during and after past mobilizations. Some of the harshest and most persistent criticism had to do with contracting methods. They were not considered to be totally appropriate. . . . Contracting readiness was examined as being a concept which would minimize probable constraints impeding the contracting process. (23:1-3)

The contracting community must learn from past mistakes and plan for all possibilities. In the future, policy makers must ensure that peacetime contracting procedures are streamlined so the contracting process functions effectively and efficiently in an uncertain national emergency/full mobilization environment.

Definitions

1. National Emergency--condition declared by the President or by Congress which authorizes certain emergency actions to be undertaken in the national interest. Actions to be taken may range up to total mobilization (13:9).

2. Mobilization--the rapid expansion of military forces and production to meet personnel and material demands in a war-fighting situation. This expansion requires the action of the President or Congress (usually a declaration of national emergency). Various emergency powers of the President are activated which include removal of the constraints of peacetime acquisitions (22:3).

3. Partial Mobilization--the mobilization of ready-reserve units, individual reserves, and the resources necessary to support them. Presidential power is limited to authorization of not more than one million additional personnel. Congress, however, may authorize any expansion up to full mobilization (13:9).

4. Full Mobilization--the mobilization of military forces and resources to support existing and planned forces (22:3-4).

5. Total Mobilization (also called M-day)--the mobilization of military forces and resources beyond existing force structures. Implied in this definition is an absolute state of mobilization where the expansion of armed forces approaches the limit of the national economy (22:4).

6. Surge--the expansion of military production without the declaration of national emergency. Expansion is generally limited to rapid increases of selected key weapons and equipment in response to an emergency in a peacetime environment. The absence of presidential emergency powers requires all acquisitions to be accomplished within the normal peacetime constraints. It is important to note that surge is limited to meeting material demands only and does not include expansion of the military personnel force (22:3).

7. War-Consumables--supplies which are consumed in use (e.g., missiles, ammunition, medicine, etc.) or which lose their identity (e.g., spare parts, etc.) (13:10).

8. Waiver--the voluntary relinquishment of a right, privilege, or advantage; also, the instrument that evidences such relinquishments (11:737).

9. Deviation--according to the Federal Acquisition Regulation (FAR) a deviation is:

(a) issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting acquisition actions of any kind, at any stage of the acquisition process that is inconsistent with the FAR.

(b) omission of any solicitation provision or contract clause when its prescription requires its use.

(c) use of any solicitation provision or contract clause with modified or alternate language (not authorized by FAR).

(d) use of any provision or clause inconsistent with the intent, principle, or substance of the provision or pertinent coverage.

(e) authorization of lesser or greater limitations on the use of any provision, clause, policy, or procedure prescribed by the FAR.

are being closely scrutinized in other major research efforts, this study scenario involves the partial or full mobilization of personnel, in addition to the mobilization of the industrial base. Acquisition requirements will be severely intensified to provide the essential items of war, both in large quantities and in very short periods of time. The DOD acquisition community will be unable to comply with these requirements, if forced to operate with the current "business as usual" restrictions placed on acquisition procedures. Time-consuming procedures in the contracting process and restrictions on the selection of sources must be removed, requiring the use of any waivers to current legislative statutes and agency regulations.

The relaxation or waiver of contracting requirements and contracting officer responsibilities identified in this study probably could not be made except in a high security risk environment. The changes, either individually or collectively, could cause major public disenchantment because of the economic and environmental implications. Therefore, society as a whole would have to recognize that a threat to national survival, such as occurred prior to World War II, was possible. Only in this setting would our elected and military leaders be politically secure enough to enact the waivers and exceptions identified in this study (15:4).

(f) issuance of policies or procedures governing the contracting process not incorporated into agency acquisition regulations (8:1-3).

10. Industrial Base--that part of the privately owned industrial production and maintenance capability of the United States, its territories and possessions, as well as capability located in Canada, expected to be available during emergencies to manufacture and repair items required by the military services (11:343).

11. Acquisition--any agreement entered into for the purchase or lease of property or services for the benefit or use of the DOD. The management and business factors involved in a continuous relationship shall also be considered part of the acquisition (4:1).

12. M-Day--designates the day on which mobilization is to begin (7:enclosure 2).

Scenario

The declaration of a national emergency or state of war with an accompanying partial, full, or total mobilization would require an immediate increase in the acquisition of war-consumables and replenishment spares. The scenario envisioned as a backdrop for this research effort is a short/medium notice mobilization of two weeks to six months leading to a protracted nonnuclear confrontation. Unlike the surge environment scenarios, which have been or

The scale of a military conflict or potential conflict would have to be greater than was evident during the Vietnam era. The primary recollection by the American population concerning support of the forces in the field in Vietnam was that the United States

. . . was able to send a large number of fully supported troops to Vietnam, and we did this without declaring a national emergency . . . or exercise of war powers during the period. (16:321)

This perception was also identified clearly in a study by Arthur D. Little, Inc. for the United States Arms Control and Disarmament Agency as shown in the following excerpt:

Interviews indicated that a broad segment of industrial and labor leaders would be reluctant to modify existing operations to accommodate a mobilization program unless there was a clear, widely accepted "national emergency." Many said that they would have to perceive and evaluate the threat for themselves regardless of Presidential or DOD announcements. This attitude exists today even among executives with a lifetime commitment to defense production and personal experience as high-ranking DOD officials. Observing these facts emphasizes their significance as a basic constraint on the mobilization process: social and potential conditions act as productivity factors in the economic system and influence the feasibility of mobilization. (15:4)

Given that both industry and the American populace recognize an emergency situation as a serious national threat, and fully support a Presidential or Congressional declaration of national emergency, then broad execution of Presidential emergency powers will be possible. DOD contracting planners must have emergency contingency plans

ready for immediate implementation should the situation arise.

Literature Review

A search was conducted for written reports and research efforts that dealt with contracting in a national emergency/full mobilization situation. The search included a review of historical information and studies involving contracting and mobilization planning.

General Research. Our forefathers recognized the need for waivers of the day-to-day contracting process in certain extenuating circumstances. In 1860, Senator Jefferson Davis sponsored passage of an advertising law directing government requirements be publicly advertised for sixty days except for matters of "public exigency." The law was used to waive advertising requirements during periods of national emergency or war from the Spanish American War until after World War II, and was applicable to all military departments (2:4-7). Planning such as this, but on a much broader scale, will ensure the United States is prepared for a quick response in a national emergency situation.

The use of incorrect or inefficient contracting methods and procedures in a national emergency situation could have unknown and possibly catastrophic lead time effects. Why would identification of policies and

provisions which contain or could require waivers be critically important prior to full mobilization or national emergency? The most obvious reason is time. The time between identification of a requirement, award of the contract, and delivery of the required item could mean the difference between winning and losing a conflict. Contracting policies and procedures, along with laws and regulations, play a critical role in the establishment of lead times, and must be effectively utilized to reduce contracting bottlenecks and delays.

Relaxing or eliminating contracting requirements could immensely expand DOD and Air Force support capabilities in an emergency situation. An example which illustrates that national emergency contracting procedures including waivers must be developed in peacetime, was identified in a study on industrial base actions involving Environmental Protection Agency (EPA) and Occupational Safety and Health Act (OSHA) restrictions:

It is reported that over 400 foundries have gone out of business over the past decade, primarily because of EPA and OSHA requirements . . . the foundries that have gone out of business are the small jobber shops that were willing to accept specialized, low-volume defense work. . . . In addition, presently active civilian factories may not be in compliance with EPA and OSHA if they convert to military production. This is especially true if the factories have never made defense products before. (1:95-99)

The necessity for preparedness to meet all potential emergency/mobilization situations by both the federal

government and the civilian sector has been publicly recognized by our high level leaders. More concrete evidence of this fact could not be found than National Security Decision Directive Number 47 which prescribes United States Emergency Mobilization Preparedness Policy:

It is the policy of the United States to have an emergency mobilization preparedness capability that will ensure that government at all levels, in partnership with the private sector and the American people, can respond decisively and effectively to any major national emergency with defense of the United States as the first priority. (19:11)

The contracting community provides a primary interface between the federal government and the private sector. As such, detailed emergency contracting procedures must be completed and incorporated into the overall emergency mobilization preparedness capability. Completion of this task in a peacetime environment will ensure a smoother transition to national emergency support by DOD contracting functions.

Problem Statement. An in-depth review of the literature of the last ten years revealed that no comprehensive national emergency guidance has been developed for the contracting community. A comprehensive document is needed which clearly delineates the laws, directive, and regulations useful or dilatorious to contracting functions in a national emergency environment.

As part of a study completed in July 1981, several managers at the Air Force Logistics Command, Aeronautical Systems Divisions, Air Force Institute of Technology, and Air Force Acquisition Logistics Division directorate level or below were interviewed to determine what contracting mobilization or contingency plans and procedures would become effective if a "protracted, nonnuclear, high intensity, large scale conflict similar to World War II began" (17:1). The overwhelming response from the managers was that they were unaware of any plans or procedures that would become effective if a state of national emergency or mobilization was declared by the President or Congress. However, most of the managers interviewed believed plans existed at their respective headquarters, although the contents were not known to them (18:7).

The need exists for the identification of existing laws, directives, and regulations which become effective in the above situation. In addition, those laws, directives, and regulations which do not contain waivers of day-to-day contracting procedures, and which contribute to extended contracting lead times in the event of a national emergency need identification. Once hostilities begin, there will be no time for piecemeal identification, deviation approval, or requesting waivers of statutes and agency regulations and directives which impede the fulfillment of urgent requirements.

Research Objective

The primary objective of this study was to identify the existing statutes and agency regulations and directives which pertain to contracting and are affected by the declaration of a national emergency. The study evaluated those areas identified to determine: (1) the potential for contracting delays and bottlenecks; (2) the existence/non-existence of an automatic waiver for emergency situations; and (3) the level of waiver authority (if any) for those situations without automatic waiver.

From the study, deficiencies were identified and a comprehensive body of material was assembled upon which future research and policy can be based.

Research Questions

In order to accomplish the above-stated research objective, this research addressed the following general questions:

1. What legislation pertaining to contracting is applicable in a national emergency or full mobilization environment?
2. Of the applicable legislation identified, which contain waivers or exceptions that would shorten the contracting process in the event of a national emergency/full mobilization?

3. Of the body of material contained in the Federal Acquisition Regulation and its supplements, which provisions contain requirements that are restrictive to the contracting process, i.e., leading to a lengthening of contracting lead time or prohibiting the use of a source?

4. Of the Federal Acquisition Regulation provisions identified, which contain waivers that would shorten the contracting process in the event of a national emergency/full mobilization, and at what level must they be approved?

5. What other agency and department regulations and directives pertain to contracting in a national emergency/full mobilization environment?

Purpose

The purpose of this research study was to identify and analyze emergency contracting and acquisition-related statutes, regulations, and directives. Based on the findings, deficiencies were indicated. A supplemental end product of this study was to identify areas of emergency contracting which require additional research and evaluation.

Scope

The focus of this research effort was limited to contracting procedures for the acquisition of spares, repair parts, and other war-consumables necessary to support existing weapon systems. The study did not address

research and development or production of new weapon systems or equipment not already in the Air Force inventory. The statutes and directives in this study were identified and analyzed in the context of a declared national emergency with attendant partial, full, or total mobilization. Procedures and directives pertaining to a production surge were beyond the scope of this effort, although it is recognized that some incidental overlap of written guidance may exist.

Summary

In the event of a national emergency, business-as-usual contracting procedures could result in unacceptably long contracting lead times and could seriously constrain the acquisition of war-consumables required to support military requirements. Education of contracting officers and requirements-generating organizations is needed during peacetime, to ensure they understand their responsibilities should an emergency situation occur. Prior identification of applicable laws, regulations, and directives is essential to ensure a streamlined contracting operation. This research will hopefully provide the vehicle that will lead to the development of a contracting officer's guide for identifying waivers presently authorized and the level of approval for submitting other waiver requests. Because contingency situations are times of extraordinary

turbulence and stress they are also times when laws and regulations are least likely to be consulted" (19:66).

The chapters that follow will describe the research methodology, the data collected from United States Code, the data collected from the Federal Acquisition Regulation* and other acquisition-related regulations and directives, and an analysis of the data collected and a summary of the effort and recommendations.

*Due to the frequent usage of regulation and directive titles in the remainder of this document, further references will not be underlined.

II. Research Methodology

Introduction

A qualitative approach was used to investigate and present contracting procedures which may be inappropriate or burdensome in the event of a national emergency. The method of research focused predominantly on a review of current literature and was divided into four data collection phases. The information gathered was primarily obtained from the following sources:

1. Federal Acquisition Regulation
2. Defense Logistics Studies Information Exchange (DLSIE)
3. Defense Technical Information Center (DTIC)
4. Federal Legal Information Through Electronics (FLITE)
5. Air Force Institute of Technology Library
6. United States Code
7. Current publications and periodicals
8. DOD/Air Force theses and studies
9. DOD directives and regulations

Data Collection--Phase One

The initial phase of the research plan required a computerized document search of surveys, reports, and

research efforts retained by the Defense Logistics Studies Information Exchange, the Defense Technical Information Center, and the Federal Legal Information Through Electronics system. After discussion of the research requirement with the Air Force Institute of Technology library staff, a search pattern consisting of broad, generalized key words and phrases was input to each of the data banks to obtain a greater breadth of potentially related documents. The primary search categories were contracting, procurement, and acquisition. National emergency and mobilization/mobilization planning were used as secondary search categories to refine the search process. The scope of the computer search was limited to material published after 1975 since only current research efforts were considered a reflection of today's contracting environment.

The Federal Legal Information Through Electronics search produced no appropriate background material. The content of this system consisted only of trial case summaries with no information pertinent to contracting in a national emergency/full mobilization situation. The remaining data bases provided thirty-one documents as a result of the search pattern. Only twelve documents contained information related to the thesis topic. The relatively small amount of background information available confirmed the results of a 1981 topic search conducted by Major Peter J. Perkowski, who determined that

. . . no one study addressed what Defense Acquisition Regulation (DAR) changes would be required, what contracting-related laws would be enacted, and to what extent national emergency contracting and acquisition planning is being performed. (17:2-3)

Data Collection--Phase Two

Chapter III was designed to provide a synopsis of current laws identified as having a potential impact on the contracting process under the previously defined scenario. United States Code was used as the basis for Chapter III because of the frequent code references in the FAR and its availability to the researchers. Three sources of information were used to identify United States Code citations: the Federal Acquisition Regulation, invitations for bid (IFB) and requests for proposal (RFP), and previous research.

The first fifty parts of the FAR were reviewed and all U.S. Code references abstracted for further research. In conjunction with the review, a combination of FAR Part 52, Solicitation Provisions and Contract Clauses, Table of Contents, and AFLC IFBs and RFPs were used to compile a list of topic areas and clause/provision titles. The list was cross-referenced against the U.S. Code Annotated General Index, which is arranged alphabetically by subject area, to identify specific code references. The references were reviewed and classified either applicable or not

applicable to the scenario. Those considered applicable were synopsized in Chapter III.

Data Collection--Phase Three

Chapter IV presents an accumulation of Federal Acquisition Regulation (FAR) provisions identified as pertinent to the research scenario. The approach used was a straightforward page-by-page review of each of the first fifty parts of the FAR to identify restrictive requirements. As each FAR part and its subparts were reviewed, the corresponding section of the Defense, Air Force, and Air Force Logistics Command Supplements were also reviewed to ensure that additional restrictions, enhancements, delegations of approval authority or other pertinent material were not inadvertently omitted.

The review of each of the parts and/or subparts of the FAR was structured to assist in the achievement of the research objectives. The purpose and intent of a part or subpart was highlighted and a subjective analysis of the subject material covered in the section was undertaken to determine its applicability to the research problem as defined and scoped in Chapter I. For example, it was determined that FAR Part 36, Research and Development Contracting, was not germane to this research effort, which is limited in its scope to the acquisition of spares, repair parts, and other war-consumables. If the section

was determined to be applicable, a more in-depth review was then performed to determine the existence of any enhancements or restrictions to the contracting process. The discovery of a pertinent enhancement or restriction was the key element in the decision for inclusion of a part or subpart. Those parts/subparts deemed pertinent to the research effort were synopsized to provide a description of the purpose or intent, the nature of particular enhancements or restrictions, and the existence/nonexistence of waivers or exceptions, and their approval levels. The resulting synopses were then incorporated into Chapter IV in numerical order by part/subpart.

Data Collection--Phase Four

During the course of conducting the literature search, it was evident that acquisition-related Department of Defense directives and Air Force regulations required a review to determine their applicability to the research scenario. A thorough review of DOD Directive 5025.1, DOD Directives Systems Quarterly Index, and Air Force 70-series regulations was conducted to identify directives or regulations having a potential impact on the contracting process during a national emergency. Synopses of these documents were developed for inclusion in Chapter IV. Although the directives and regulations were not all directly related to the contracting process, their indirect impact should

have a major effect on contracting lead time in a national emergency environment.

Data Analysis Methods

With the objective of answering the research questions contained in Chapter I, a method of data analysis was devised to provide a common framework for the display of diverse material collected in a subjective manner, and to accommodate possible future users of the research product. The breakdown of the data collected was based on the two fundamental types of data: (1) legislation/statutes and (2) regulations/directives, as reflected in Chapters III and IV respectively. The data breakdown reflected by Chapters III and IV also directly correlates with the research questions in their order of appearance in Chapter I.

To facilitate the data analysis, within the basic construct of two types of data, a series of matrix arrays was developed by subdividing the two data types into various classifications, by similar subject area. The result of this classification process was an identification of each item of data by both subject area and level of approval, thus providing a more consistent and illuminating analysis.

Specific levels of approval used in the analysis were determined to a large degree by the data itself. The

hierarchy of approval level was arranged from highest level to lowest level with other executive agencies and outside agencies considered as the same level as the Department of Defense. The choice of subject classification was also found to be somewhat dependent on the data collected, and varied between the two data types. Variations in classification were minimized to maintain an adequate degree of consistency in the analysis.

III. United States Code

This chapter summarizes the federal laws affecting contracting actions of the Department of Defense, in general, and the Department of the Air Force specifically. Some of the laws will become applicable only upon a declaration of national emergency or war by the President or Congress. Other authorities are applicable in the day-to-day peacetime contracting environment, but contain provisions that exempt government contracting requirements and contractor actions that could severely impair contract delivery lead times and thus the mission of defense components. This chapter does not provide an opinion as to the usefulness or deficiencies of existing legislation nor make recommendations on future legislative enactment. However, conclusions and recommendations on selected laws will be provided in Chapters V and VI.

The identified legislation is intended as a reference guide for contracting officers in crisis situations and should not be used as a substitute for the full text of any regulation or law. In addition, this reference should not be used as a basis for legal action or contracting officers' decisions without concurrence of legal counsel. The contents of this document should be regularly

updated because of yearly changes to and deletions from portions of United States Code and public law.

Chapter III is a compilation of national emergency and war legislation identified through a review of the General Index of United States Code Annotated including index updates through the 1984 Interim Pamphlet. The following key words were used to identify and cross-reference the legislation: contracting, procurement, acquisition, contract award, mobilization, and national emergency. In addition, words abstracted from a complete list of contract clauses compiled from randomly selected Air Force Logistic Command invitations for bid and requests for proposal were used. Unless otherwise indicated, all references were synopsized from United States Code Annotated (21).

Each reference is structured with a summary of the pertinent provisions of law in numerical order, by code title and section. In addition, each law is assigned consecutive numbers for ease of cross-reference from Appendix A, United States Code Reference List. Each reference is structured in the following format:

[Reference Number] [Nomenclature of Code]
[Code Title and Section]
[Synopsis of the Code]

1. Congressional policy on defense procurement

10 U.S.C. 2301

Congress determined that in order to ensure national defense preparedness, conserve fiscal resources, and enhance defense production capability, it is in the interest of the United States to acquire services and property for the Department of Defense in the most timely, economic, and efficient manner. It is therefore a policy of the Congress that--

(1) full and open competitive procedures shall be used by the Department of Defense;

(2) services and property (including weapons systems and related items) be acquired by any type contract, other than cost-plus-percentage-of-cost contracts, that will promote the interest of the United States;

(3) policies and procedures be implemented to support the Department of Defense in time of war or national emergency as well as in peacetime;

(4) policies and procedures be implemented to promote the attainment and maintenance of essential capability of the defense industrial base and industrial mobilization.

2. Contracts: competition requirements

10 U.S.C. 2304

The head of an agency conducting procurement of property or services shall obtain full and open competition

through the use of competitive procedures promulgated by this Act except when--

(1) the head of the agency determines that excluding a source or sources would be in the interest of national defense by having a facility available for furnishing the property or service in case of a national emergency;

(2) the need for the property or service is of such an unusual and compelling urgency that the United States would be seriously injured unless an agency was allowed to limit the number of sources from which bids were solicited;

(3) it is necessary to award the contract to a particular source in order to maintain a source of supply in case of a national emergency;

(4) when disclosing the agency's needs would compromise the national security unless the number of bids and proposals solicited is limited.

3. Cost and Pricing data

10 U.S.C. 2306(f)

A prime contractor or any subcontractor shall be required to submit cost or pricing data and shall be required to certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted

is accurate, complete, and current under the following situations;

(1) before the award of any prime contract or subcontract entered into after using other than sealed bid procedures, if the price is expected to exceed \$100,000;

(2) before the pricing of any change or modification to a prime or subcontract if the price change is expected to exceed \$100,000;

The above requirements need not be applied to contracts or subcontracts where the price is based on adequate price competition, established catalog or market prices of commercial items, prices set by law or regulation or in exceptional cases where the head of the agency determines that the requirements may be waived and states in writing his reasons for the determination.

4. Transportation to and from certain places of employment and on military installations

10 U.S.C. 2632(a)(2)

Whenever the Secretary of a military department determines that it is necessary for the effective operation of that department, he may, at reasonable rates under regulations prescribed by the Secretary of Defense, provide and ensure adequate transportation for persons attached to, or employed in, that department; and during a war or national emergency declared by Congress or the

President, for persons attached to, or employed in, a private plant that is manufacturing material for that department.

5. Acquisition of Real Property

10 U.S.C. 2663(a), (b), (c)

The Secretary of a military department may have proceedings brought in the name of the United States to acquire by condemnation any interest in land for the purpose of defense or manufacture of defense materials. In time of war or if war is imminent, the United States may take immediate use of the land. The Secretary may contract for or buy any interest in land needed for purposes stated above as soon as the owner fixes a price the Secretary considers reasonable.

6. Acquisition of property for lumber production

10 U.S.C. 2664(a), (b), (d), (e)

The Secretary of a military department may have proceedings brought in the name of the United States to obtain by condemnation any interest in standing or fallen timber, sawmills, camps, machinery, logging roads, rights-of-way, or other related supplies or materials needed for--

(1) the production of aircraft, vessels, dry docks, or equipment to support them.

(2) the procurement of supplies for aircraft, vessels, and dry docks.

(3) housing for persons employed by the United States in connection with the Army, Navy, Air Force, or Marine Corps.

In time of war or if war is imminent the United States may take immediate use of the property. The Secretary of the military department may contract for the property needed as soon as the owner fixes a price the Secretary considers reasonable.

7. Leases: non-excess property

10 U.S.C. 2667(a)

The Secretary of a military department may lease to a lessee on terms he considers will promote national defense, any real or personal property that is under the control of the department and which is not at the present time needed for public use or not excess property. The lease must contain a provision to permit the Secretary to revoke the lease at any time in order that property could be put back into operation in the event of an emergency.

8. Acquisition: interest in land when cost is not more than \$100,000

10 U.S.C. 2672

The Secretary of a military department may acquire any interest in land that he or his designee determines is needed in the interest of national defense and does not cost more than \$100,000.

9. Acquisition: interest in land when need is urgent

10 U.S.C. 2672a

The Secretary of a military department may acquire any interest in land that he or his designee determines is needed in the interest of national defense and is required to maintain the operational integrity of a military installation. Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act. Congressional notification is required at least 30 days prior to taking this action.

10. Construction authority in the event of a declaration of war or national emergency

10 U.S.C. 2808

In the event of a declaration of war or national emergency by the President that requires the use of the armed forces, the Secretary of Defense, without regard to any other provisions of law, may undertake military construction projects not otherwise authorized by law that are needed to support the use of the military. Construction can only be undertaken using appropriated funds that have not been obligated.

11. Production of supplies and munitions: hours and pay of laborers and mechanics

10 U.S.C. 9025

The regular working hours of laborers and mechanics of the Department of the Air Force producing military supplies and munitions are 8 hours a day or 40 hours a week. However, during a national emergency declared by the President, the Secretary of the Air Force may prescribe regulations for the extension of the work hours. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

12. Industrial mobilization: orders; priorities; possession of manufacturing plants

10 U.S.C. 9501(a), (b), (c), (d)

In time of war or when war is imminent, the President may order products or materials from any person or manufacturing industry which usually produces or is capable of producing the material or product. A person or industry who receives an order shall comply with that order and give it precedence over all other orders not placed under this law.

In addition, the President may take possession of any plant that is equipped to manufacture, or is capable of

being readily transformed into a plant for manufacturing, arms, ammunition, parts, or supplies for the Air Force, if the person or industry owning or operating the plant refuses to--

- (1) give precedence to the order
- (2) manufacture the items ordered by the Secretary
- (3) furnish the items at a reasonable price determined by the Secretary.

The President, through the Secretary, may manufacture products that are needed in time of war or when war is imminent, in any plant seized.

13. Industrial mobilization: plants

10 U.S.C. 9502

The Secretary of the Air Force shall maintain a list of all privately owned plants in the United States, and the Territories, Commonwealths, and possessions, that are equipped to manufacture and plants that are capable of being readily transformed into factories for the manufacture of arms and ammunition for the Air Force in time of war or when war is imminent. A list shall also be kept of the products each plant can make and the equipment in those plants.

14. Control of transportation systems in time of war

10 U.S.C. 9742

In time of war, the President, through the Secretary of the Air Force, may take possession and assume control of all or any part of any system of transportation to transport troops, war materials, and equipment, or for other purposes related to the emergency.

15. Emergency construction: fortifications

10 U.S.C. 9776

If in an emergency the President considers it urgent, a temporary air base or fortification may be built on private land if the owner consents in writing.

16. Acquisition of buildings in District of Columbia

10 U.S.C. 9780

In time of war or when war is imminent, the Secretary of the Air Force may acquire by lease any building that may be needed for military purposes. The Secretary shall determine a fair and reasonable price and pay for the building out of funds appropriated for the payment of rent by the Department of the Air Force. If the owner is not satisfied with the determination, the claimant can file an action against the United States for the additional amount.

17. Procurement contracts; subcontracts to small business and small disadvantaged business concerns

15 U.S.C. 631-644

It is the policy of Congress that the Government should aid, counsel, and assist, as far as possible, the interest of small business concerns and insure that a fair portion of total purchases and contracts or subcontracts for property and services be placed with small and/or small disadvantaged business concerns.

Any executive agency is required to provide the Secretary of Commerce for publication, a notice of solicitation in accordance with 15 U.S.C. 637(e) except when the following conditions exist:

(1) the notice would disclose the executive agencies needs and the disclosure would compromise national security;

(2) the procurement is under conditions described in 10 U.S.C. 2304(c) (2), (3), (4), (5), (7);

(3) the head of the executive agency makes the determination in writing, after conferring with the Administrator for Federal Procurement Policy and Administrator of the Small Business Administration that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

An executive agency may not award a contract using other than competitive procedures except:

(1) when a written justification for the use of such procedures has been approved at the appropriate agency level.

(2) the exceptions referenced in 10 U.S.C. 2304(f)
(1) and (2) are applicable to the requirement.

18. Toxic substances control

15 U.S.C. 2601, 2621

Congress has determined that people and the environment are being exposed to a large number of chemical substances each year. Many of those chemicals manufactured, processed, and distributed in industry may in use and disposal present an unreasonable risk of injury to health or the environment and should be regulated. However, the Administrator shall waive compliance with any provision of this Chapter upon a request and determination by the President that the requested waiver is necessary in the interest of national defense. The Administrator shall make a record of the waiver and publish it in the Federal Register unless requested not to do so by the President.

19. Marine Sanctuaries

16 U.S.C. 1431

Congress has determined that certain areas of the marine environment possess qualities that give them special national prominence. This law provides authority for identifying, conservation, and management of marine areas

with the primary objective of resource protection. There is no waiver by the President in time of war or national emergency.

20. Wartime suspension of limitations

18 U.S.C. 3287

When the United States is at war the running of any statute of limitations applicable to an offense involving fraud against the United States committed in connection with the acquisition, negotiation, procurement, award, performance, payment, settlement, or termination of a contract or subcontract which is connected with the prosecution of war shall be suspended until three years after termination of hostilities by the President or Congress.

21. Supplies for vessels and aircraft

19 U.S.C. 1309(a)

Articles of foreign or domestic origin may be withdrawn, under regulations prescribed by the Secretary of the Treasury, from customs bonded warehouses or foreign trade zones free of duty and internal revenue tax if the supplies are for vessels or aircraft operated by the United States.

22. Emergencies

19 U.S.C. 1318

Whenever the President declares a national emergency, he may authorize the Secretary of the Treasury to permit the importation free of duty of food, clothing, medical, surgical, and other supplies for the use in the emergency relief work.

23. Trade Agreements Act of 1979

19 U.S.C. 2501 et seq

The purposes of the Act are--

(a) to approve and implement the trade agreements negotiated under the Trade Act of 1974;

(b) to foster the growth and maintenance of an open world trading system;

(c) to expand opportunities for commerce of the United States in international trade;

In order to encourage additional countries to become parties to the Agreement and to provide for reciprocal competitive government procurement opportunities for United States products and suppliers of products, the President shall prohibit the procurement of products from a foreign country which is not designated under the Act. However, the President may authorize the Secretary of Defense to waive, subject to review, prohibitions

for products of any country which enters a reciprocal procurement agreement with the Department of Defense.

24. Fair Labor Standards Act of 1935

29 U.S.C. 206(e)

The Fair Labor Standards Act establishes--

(a) minimum wages to be paid contract and subcontract employees providing services to the United States and not governed by the Service Contract Act of 1965.

(b) that no employer shall require any employee to work longer than forty hours in a workweek unless the employee receives compensation for the hours in excess of forty at a rate not less than one and one-half times the regular rate at which he is employed.

No exception or waiver to the above requirements concerning Department of Defense contracting was found in the Act.

25. Occupational safety and health

29 U.S.C. 651, 665

Congress has determined that personal injuries arising out of work situations impose a substantial burden and hinderance to commerce in terms of lost production, lost wages, medical expenses, and disability compensation insurance. Congress declared that it is the purpose of this law to assure so far as possible every man and woman safe and healthy working conditions. However, the

Secretary of Labor may make exceptions to any or all provisions as he finds necessary to prevent serious damage to national defense.

26. Employment under Federal contracts

29 U.S.C. 793

Any contract in excess of \$2500 entered into by a Federal department or agency for the procurement of personal services or nonpersonal services including construction shall contain a provision requiring the contractor or subcontractor to take affirmative action to employ and advance the employment of qualified handicapped individuals.

The requirements may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, when he determines that special circumstances in the national interest make the waiver necessary and states his reasons for the determination in writing.

27. Limitations on expending and obligating amounts

31 U.S.C. 1341

An officer or employee of the United States Government may not--

(a) make or authorize an expenditure or obligation in excess of an appropriation or fund for the expenditure or obligation;

(b) involve the Government in a contract or obligation for the payment of money before any appropriation is made unless authorized by law.

No exception or waiver was contained in this provision of law.

28. Assignment of claims

31 U.S.C. 3727

An assignment may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim is issued. This does not apply to an assignment to a financing institution for money due. During a war or national emergency declared by the President or Congress, a contract with Department of Defense may provide, or may be changed without consideration to provide, that a future payment under the contract to an assignee is not subject to reduction or setoff.

29. Pollution prevention: navigable waters

33 U.S.C. 1251 and 1368

The objective of these laws is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The following goals have been established to meet the objective:

(1) the discharge of pollutants into the navigable waters will be eliminated by 1985.

(2) the discharge of toxic pollutants in toxic amounts is prohibited.

(3) the Administrator of Environmental Protection Agency shall develop and publish regulations specifying minimum guidelines for public participation in the processes.

(4) all Federal agencies shall cooperate to develop solutions to prevent, reduce, and eliminate pollution under the program.

No Federal agency may award a contract to any person, who has been convicted of any offense under this law, for the procurement of goods, services, and materials if the contract is to be performed at the facility where the violation occurred. The prohibition shall continue until the Administrator certifies the violation has been corrected.

The President may exempt any contract from any part or all of the provisions of this law if he determines the exemption is necessary in the paramount interest of the United States. Congress shall be notified of all exemptions.

30. Dumping of materials in ocean waters

33 U.S.C. 1401

Unregulated dumping of material into ocean waters endangers human health, welfare, and the marine

environments. It is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent the dumping of all types of materials which could have an adverse effect on humans or any part of the environment. There is no war or national emergency waiver of this law.

31. Veteran's employment emphasis under Federal contracts

38 U.S.C. 2012

Any contract in the amount of \$10,000 or more awarded by any department or agency for the procurement of personal or nonpersonal services including construction shall contain a provision requiring the contractor or subcontractor to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. No waiver or exception is provided.

32. Rate of wages for laborers and mechanics

40 U.S.C. 276a

The advertised specifications for every contract in excess of \$2000 for construction, to which the United States is a party, and which requires the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid. The wages will be determined by the Secretary of Labor. The President has the

authority, through either a proclamation or executive order to suspend the provisions of this section in case of a national emergency.

33. Lease of buildings to Government; maximum rental

40 U.S.C. 278a, 278b

No appropriation shall be obligated or expended for the rent of any building or part of a building to be occupied by the Government at a rental price in excess of 15% of the fair market value of the premises at the date of the lease. Nor shall improvements, repairs, or alterations be made in excess of 25% of the first year's rent. However, this provision shall not apply during a war or national emergency declared by Congress or the President to leases or renewal of leases of privately or publicly owned property for military, naval, or civilian purposes necessary for the prosecution of the war or national emergency.

34. Sale of war supplies, lands, and buildings

40 U.S.C. 314

The President is authorized to sell any war supplies, materials, equipment, buildings, or lands to any person, partnership, association, corporation, or any foreign government engaged in a war against any Government with which the United States is at war.

35. Limitations, variations, tolerances, and exemptions to the eight-hour day and forty-hour week

40 U.S.C. 328, 331

The Secretary of Labor may provide reasonable limitations and exemptions from any or all provisions of the standard workday of eight hours and workweek of forty hours. He must find these variations proper and necessary in the public interest to prevent injustice, undue hardship, or to avoid serious impairment of the conduct of Government business.

36. No contracts or purchases unless authorized

41 U.S.C. 11-12

No contract or purchase on behalf of the United States shall be made, unless it is authorized by law or is under an adequate appropriation. Exceptions are allowed in the Departments of Army, Navy, and Air Force for the purchase of clothing, subsistence, forage, fuel, quarters, transportation, and medical supplies but quantities shall not exceed the needs of the current year. Quarterly estimates of obligation shall be reported to Congress.

No contract shall be entered into for the erection, repair, or furnishing of any public building, or any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.

37. Transfers of contracts; assignment of claims;
set-off against assignee

41 U.S.C. 15

No contract or order shall be transferred by the contractor to another party except in any case in which the money due or to become due from the United States is assigned to a bank or other financial institution. However, in time of war or national emergency proclaimed by the President or Congress, contracts of the Department of Defense may be awarded or amended without consideration to provide payment of money due to an assignee and these contracts shall not be subject to reduction or set-off. The provisions of the National Emergencies Act, 50 U.S.C. 1601 et seq, shall not apply to the authorities of this section.

39. Blind and severely handicapped purchases

41 U.S.C. 48

If any agency of the Government intends to purchase supplies or services provided on the procurement list for the blind and severely handicapped, the agency shall purchase the supplies or services at the list price established from a qualified nonprofit agency for the blind and severely handicapped if the item is available within the period required.

39. Service contract labor standards

41 U.S.C. 351-356

Every contract entered into by the United States or the District of Columbia in excess of \$2500, whether negotiated or advertised, the principal purpose of which is to furnish services using services employees in the United States, shall contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees. Unless the Secretary of Labor otherwise recommends, because of unusual circumstances, no contract of the United States shall be awarded to persons or firms on the list of labor standards violators.

The Secretary may provide for reasonable limitations and allow exemptions to and from any or all provisions of the above requirements if he determines it necessary and proper in the public interest or to avoid serious impairment of government business. No exemption is presently provided which would automatically become effective in the event of national emergency or full mobilization.

40. Contract Disputes Act

41 U.S.C. 601-605

All executive agency contracts for the procurement of property, services, construction, or disposal of

personal property are subject to the Contracts Disputes Act. Provisions or clauses may be included in Government requiring a contractor to proceed diligently with contract performance in accordance with the contracting officer's decision pending final decision on an appeal or final settlement.

41. Public health and welfare: public water systems

42 U.S.C. 300f - 300j-6

To assure the health and safety of the public, the Administrator of the Environmental Protection Agency shall provide regulations applying to public water systems which identify contaminants that may have an adverse effect on a person's health. In addition, each contaminant shall have a maximum level specified.

These national drinking water regulations shall be mandatory over each Federal agency having jurisdiction over a public water system or engaged in activities which may endanger a drinking water supply.

The Administrator shall waive compliance with these provisions upon request of the Secretary of Defense and upon determination by the President that the requested waiver is necessary in the interest of national security. Unless the Secretary of Defense requests otherwise, the Administrator will publish the waiver in the Federal Register.

42. Public health and welfare: noise

42 U.S.C. 4901, 4903

The Congress has determined that uncontrolled noise presents a danger to the health and welfare of the population. Each department of the Federal Government shall comply with all federal, state, and local noise control requirements. However, the President may exempt any activity or facility of any department for one year if he determines it to be in the paramount interest of the United States. All exemptions shall be reported to Congress.

43. Solid waste disposal

42 U.S.C. 6901 et seq

The objective of this law is to promote the protection of health and environment and to conserve valuable material and energy resources. Each department or agency of the Federal government having jurisdiction over or engaged in any activity resulting in the disposal or management of solid or hazardous waste shall comply with all Federal, State, interstate, and local requirements governing such wastes. Federal procurement agencies shall comply with the requirements of this law and any regulations issued pursuant to the law if the estimated cost of the purchase is expected to be \$10,000 or more.

The President may exempt any solid waste management facility of any department or agency in the executive

branch from compliance with such requirements if he determines it to be in the paramount interest of the United States. An exemption shall not be granted for more than one year but a new determination for the same facility may be renewed on a year-to-year basis.

44. Air pollution prevention: clean air

42 U.S.C. 7401 et seq

The purpose is to provide protection and enhancement of the Nation's air resources to promote the public health, welfare, and productivity of the population. Both public and private facilities shall comply with Environment Protection Agency regulations concerning all pollutants. Exemptions:

(1) The President may exempt any facility from compliance with the requirements for a period of not more than two years if he finds that the technology to implement the requirements is not available and the operation of the facility is required for reasons of national security.

(2) The Administrator of the Environmental Protection Agency can exempt any new motor vehicle or engine if he finds it necessary for reasons of national security.

No Federal agency may enter into a contract with a person convicted of an offense under this law for the procurement of goods, materials, and services to perform

the contract at a facility at which the violation occurred. However, the President may exempt any contract from any or all provisions of this law when he determines the exemption is necessary in the paramount interest of the United States.

45. Rights and powers retained by the United States:
purchase of natural resources and condemnation
of land

43 U.S.C. 1314

The United States retains the rights to, power of regulation over, and control of land for purposes of national defense. In time of war or as determined necessary for national defense by the President or Congress, the United States shall have the right of first refusal to purchase, at the prevailing market price, all or any portion of the natural resources and to acquire and use the land after paying the owner just compensation.

46. Reservation of lands and rights--Withdrawal of
unleased lands by the President

43 U.S.C. 1341

In time of war, or when determined by the President, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf. If a portion of the Continental Shelf is under lease, the

lease shall contain a provision whereby upon the recommendation of the Secretary of Defense, the lease can be suspended during a national emergency or a war.

47. Government printing

44 U.S.C. 501, 502, 504

All printing and related work for every executive department shall be done at the Government Printing Office except--

(a) classes of work the Joint Committee on Printing considers urgent or necessary to have done elsewhere;

(b) work which the Public Printer is not able or equipped to do at the Government Printing Office may be produced under contracts;

(c) when an executive department is authorized by the Public Printer to purchase direct printing and related work, the Government Printing Office is not able or suitably equipped to perform or is in the Government interest to have performed elsewhere.

48. Transportation in American vessels of Government personnel and certain cargo

46 U.S.C. 1241

Any officer or employee of the United States traveling on official business overseas shall travel and transport personal effects on ships registered under the laws of the United States when such ships are available.

Whenever the United States contracts for the shipment of equipment, materials, or commodities, the contracting agency shall take steps to ensure that at least 50 percent of the gross tonnage, which may be transported on ocean vessels, is transported on privately owned United States-flag vessels if they are available at a fair and reasonable price. However, the provisions of this law may be waived when the Secretary of Defense, the President, or Congress declares that an emergency exists which justifies a temporary waiver.

49. Authority to provide insurance; consideration of risk. Insurance of property of government departments and agencies (19:432-433)

46 U.S.C. 1282, 1285

The Secretary of Commerce, with the approval of the President and consultation with the Department of Defense, may provide insurance against loss or damage by war risk whenever it appears that adequate insurance cannot be obtained under reasonable terms and conditions from insurance companies in the United States. The Secretary of Commerce is authorized at the request of the Secretary of Defense to provide the insurance without cost if the Secretary of Defense agrees to indemnify the Secretary of Commerce against all loss covered by the insurance.

50. Procurement of ships and materials during war;
changes in contracts, etc.

50 U.S.C. 82

In time of war the President is authorized and empowered to:

(1) place orders with any person for ships or war materials needed by the Government. Compliance with the orders is legally binding and shall take precedence over all other orders. If a person fails or refuses to give the order precedence or to build the ordered item and at a reasonable price, the President may take immediate possession of the factory and use it as he deems necessary.

(2) modify or cancel any contract. If the contractor refuses to comply with the modification, the President may take immediate possession of the factory and use it as he deems necessary.

(3) require delivery of all or any part of a factory output. Deliveries will be made at the times specified and determined by the President.

Compensation shall be given the owner for any contracts cancelled or modified whenever a factory is taken over.

51. Acquisition and development of strategic raw materials

50 U.S.C. 98, 98a, 98f

The natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense. Therefore, it is the purpose of this law to provide for the acquisition and retention of stocks of the materials in order to reduce the dangerous and costly dependence by the United States on foreign sources during a national emergency. The materials may be released from the stockpile when the President determines the release is required for purposes of national defense. During a war or national emergency, any officer appointed by the President can release material from the stockpile if required for national defense purposes.

52. Defense industrial reserves

50 U.S.C. 451-453

This law provides adequate measures for Government-owned industrial plants, reserve machine tools, and other industrial manufacturing equipment needed for immediate use to supply the needs of the military in the event of a national emergency. This is intended to be a comprehensive and continuous program for the future safety and

defense of the United States. The Secretary of Defense has the primary responsibility for implementing and directing the program which includes among other things the selection of the industrial plants to become part of the defense industrial reserve.

53. National defense contracts: award, amendment, modification

50 U.S.C. 1431-1435

The provisions of this law are effective during a national emergency declared by the President or Congress and for six months after the termination of the emergency or until Congress sets an earlier date. The President may authorize any department or agency of the Government to enter into and make amendments or modifications to contracts whenever he deems necessary in the interest of national defense. The authority to obligate the United States in amounts in excess of \$50,000 shall not be used unless the approval of a designated official is received. If the authority of this law is going to be used to obligate the government for an amount in excess of \$25,000,000, the Armed Services Committees of Congress must be notified in writing. Congress must be given a maximum of 60 days to determine whether the action should be allowed.

54. Termination of existing declared emergencies

50 U.S.C. 1601

All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as a result of any declaration of national emergency in effect on September 14, 1976 are terminated effective September 14, 1978.

55. Declaration of national emergency by the President

50 U.S.C. 1621

Congress, through its Acts, has authorized the President special and extraordinary powers. The President is authorized to declare a national emergency which shall immediately be transmitted to Congress and published in the Federal Register. Any provisions of law conferring power and authority to be exercised during a national emergency shall be effective and remain in effect only when the President specifically declares a national emergency.

56. National emergencies: terminations

50 U.S.C. 1622

Any national emergency declared by the President shall be terminated if Congress terminates the emergency by concurrent resolution or if the President issues a proclamation terminating the emergency. Any powers or authorities granted by the emergency shall cease to be used after the date specified in the resolution or the proclamation.

Within six months after the emergency is declared and every six months thereafter, in which the emergency exists, both Houses of Congress shall meet to determine if a joint resolution should terminate the emergency. Any national emergency declared by the President shall terminate on the date of the anniversary of the declaration if within 90 days prior to that date, the President does not transmit a notice to Congress stating the emergency is to continue. A notice shall also be placed in the Federal Register.

57. Exercise of emergency powers and authorities

50 U.S.C. 1631

When the President declares a national emergency, no powers or authorities made available by the statute for use in the emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes he or his officers will act. The specification can be made in either the declaration of national emergency or an Executive order transmitted to Congress and published in the Federal Register.

58. Accountability and reporting requirements of the President

50 U.S.C. 1641

(a) When the President declares a national emergency, or Congress declares a war, the President shall be responsible for maintaining a file and index of all related

Executive orders and proclamations. Each Executive agency shall maintain a file and index of all rules and regulations issued during the emergency as a result of the declaration.

(b) All significant Executive orders, proclamations, rules, and regulations shall be immediately transmitted to Congress.

(c) The President shall transmit to Congress, within 90 days after the end of each six-month period of the declaration, a report of expenditures incurred as a result of the declaration. Not later than 90 days after the termination of the declaration, a final report of all expenditures will be sent to Congress.

59. Application to powers and authorities of other provisions of law

50 U.S.C. 1651

The provisions of Chapter 34, National Emergencies, (50 U.S.C. 1601-1651) do not apply to the following laws or the authorities and powers provided by them.

- (a) 40 U.S.C. 278b.
- (b) 41 U.S.C. 252.
- (c) 31 U.S.C. 203.
- (d) 41 U.S.C. 15.
- (e) 50 U.S.C. 1431-1435.
- (f) 10 U.S.C. 2304(a)(1).

60. Use of enemy patents, copyrights, or trademarks

50 U.S.C. App. 10(c)

When the United States is at war, the President may grant a license to manufacture goods, to use any trademark, or copyright which is owned or controlled by an enemy or ally of an enemy of the United States. The President may prescribe conditions of the license, including the fixing of prices of articles and products necessary to the health of the military or the successful prosecution of the war (19:444).

61. Utilization of industry: placement of orders

50 U.S.C. App. 468

Whenever the President determines that it is in the interest of national security for the Government to obtain immediate delivery of materials, which have been authorized for purchase for the military by Congress, he may have orders placed with any person operating a facility capable of manufacturing the material. However, if the order will cost more than \$25,000,000, Congress must be notified in writing at least 60 days in advance of the proposed acquisition. Congress may at that time disapprove the order. Small business enterprises shall be given a fair share of the orders. It is the responsibility of the person who receives the order to give the order precedence over all other orders and to fill the order

within the time established by the President or as soon after that time as possible. If for any reason the person with whom the order is placed fails or refuses to comply with the above requirement, the President is authorized to take immediate possession of that person's facility and operate through a Government agency for the production of materials required by the Government. Fair and just payment shall be made the United States for materials manufactured and for the use of the plant if the Government takes possession.

62. Defense Production Act of 1950: Declaration of policy

50 U.S.C. 2061 and 2062

It is the policy of the United States to oppose acts of aggression and to promote peace by insuring respect for world law and the peaceful settlement of differences among nations. As a result, the United States is determined to develop and maintain whatever military and economic strength needed to carry out this objective. Under present circumstances, it may be necessary to transfer some materials and facilities from civilian to military use. It is the objective of this Act to provide the President with the authority to accomplish these adjustments to the economy. The authority shall be used to promote national defense.

63. Priorities and Allocations: Priority in contracts and orders

50 U.S.C. App. 2071

(a) The President is authorized to require performance on contracts and orders he deems necessary to promote national defense and that these contracts will have priority over any other contracts held by the person the President finds capable of performing the contract or order. The President may also allocate materials and facilities in such a manner and to the extent he deems necessary to promote national defense.

(b) The President may require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials and equipment in order to maximize domestic energy supplies. Authority under this provision terminated on December 31, 1984.

64. Loan guarantees

50 U.S.C. App 2091

In order to expedite production and deliveries or services under Government contracts, the President may authorize agencies or departments engaged in procurement for the national defense to guarantee in whole or in part any financial institution against loss of any loan or financial commitment. The loans must be made to a contractor, subcontractor, or other person in connection with

the performance of any contract for the procurement of materials or the performance of a service for the national defense.

Except during periods of national emergency declared by the Congress or the President, a guarantee may be entered into under the authority of this section only if the President determines that--

(1) the guaranteed loan is for a material or service which is essential to the national defense;

(2) without the guarantee, United States industry cannot reasonably be expected to provide the capability for the needed material or service in a timely manner;

(3) the guarantee is the most cost-effective, expedient, and practical alternative for meeting the need involved;

(4) the United States national defense demand is greater than the output of domestic industrial capability available for national defense.

(5) a guarantee may be made under this section only if the industrial resource shortfall for which the guarantee is intended has been identified in the Budget of the United States.

65. Loans to private enterprises

50 U.S.C. App 2092

The President may make provisions for loans to private business enterprises for the expansion of capacity, the development of technological processes, and the production of essential materials in order to expedite deliveries of materials under contracts for national defense. Such loans may be made without regard to the limitations of existing laws and on terms and conditions deemed necessary by the President, except--

(1) financial assistance may be given only when it is not available elsewhere on reasonable terms;

(2) that during periods of national emergency declared by the Congress or the President, no loan may be made unless the President determines it is needed for the expansion of capacity to meet the needs for the production of materials for national defense.

No loan may be made under the authority of this section, except during periods of national emergency, unless the industrial resource shortfall for which the loans was intended has been identified in the Budget of the United States.

Loans for a particular industrial shortfall may not exceed \$48,000,000 unless specifically authorized by law.

66. Cost accounting standards

50 U.S.C. App 2168

Cost accounting standards shall be used by all relevant Federal agencies, defense contractors and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing, administration, and settlement of all negotiated prime contracts and subcontracts for national defense requirements over \$100,000. Exceptions are provided for contracts and subcontracts when the price is based on established catalog or market prices set by law or regulation.

The Cost Accounting Standards Board is authorized to make rules and regulations exempting classes and categories of defense contracts and subcontracts.

IV. Acquisition Regulations and Directives

This chapter summarizes those portions of the Federal Acquisition Regulation (FAR), supplements thereto, and other agency regulations and directives which may impede the contracting process, preventing timely delivery of urgently needed requirements, or which specifically enhance the ability of the Department of Defense and the Air Force to expeditiously contract for vital supplies and services. The material contained in this chapter was identified through a review of 48 CFR Chapter 1, Federal Acquisition Regulation, Defense FAR Supplement (DFARS), Air Force FAR Supplement (AFFARS), Air Force Logistics Command FAR Supplement (AFLCFARS), and DOD Directive 5025.1, DOD Directives Systems Quarterly Index.

The objective of the review was an identification of any policy, provision, or rule which would unduly inhibit or restrict the award of a contract or modification in a timely manner, or which would diminish in any way the availability of potential sources. For those portions of the FAR and its supplements identified in this chapter, a synopsis of the general requirements is given, along with the statutory reference where applicable. An account of the existence of any pertinent exceptions is provided,

along with the availability of waivers and their determination level.

One of the stated objectives of this research effort is the identification of existing waivers pertaining to the use of Federal Acquisition Regulation provisions which are deemed to be impediments to an expedited contracting situation. Should a waiver or exception not exist for a particular provision or clause, the omission, modification, limitation, or other inconsistent use of the provision or clause would constitute a deviation from the FAR.

Part 1--Federal Acquisition Regulation System

The Federal Acquisition Regulation System represents the codification and publication of uniform policies and procedures for acquisition by all executive agencies. Part 1 provides general information and basic policies regarding the FAR. Of interest to this study are those portions which address deviation procedures and contracting authorities.

Subpart 1.4--Deviations from the FAR. Subpart 1.4 of the FAR expresses the policy of deviation approval as based upon a case-by-case review of the needs and requirements of the agency. Deviations may be approved for individual contracts or class of contracts. Individual

deviations must be submitted in writing as far in advance as exigencies of the situation allow. Advance notice for individual deviations is exempted in situations requiring immediate action. However, individual deviations are not permitted which affect provisions required by statute or executive order. All class deviation approvals are controlled by the Assistant Secretary of Defense (Acquisition and Logistics). Individual deviations may be approved by the head of the contracting activity.

Subpart 1.6--Contracting Authority and Responsibility. Subpart 1.6 provides that only duly appointed contracting officers may enter into contracts on behalf of the Government, and that they may bind the Government only to the extent of their delegated authority.

The AFFARS stipulates that in the case of emergency situations resulting from military action, extraordinary acquisition authority may be required. To meet these emergencies, the theater commander and commander of the major command responsible for logistics support is authorized to use expedited acquisition procedures to the extent allowed by law.

The AFLC Supplement to this FAR subpart specifies that Commanders, Air Logistics Centers, AFLC, have been delegated the authority to approve all contractual actions

in unlimited dollar amounts where the action is in support of an emergency situation.

Additional coverage is contained in this subpart which permits the designation of imprest fund cashiers by contracting officers. Designated individuals have the authority to make small purchases under the jurisdiction of the contracting officer.

Part 5--Authorized Contracting Actions

Part 5 of the FAR addresses the policies and procedures for publicizing contract opportunities and information concerning contract awards. The requirement to publicize contract actions reflects the goals of increased competition, and assistance to small business, small disadvantaged business, and labor surplus area concerns. The following subparts were found to contain potential impediments to the contracting process.

Subpart 5.2--Synopsis of Proposed Contracts.

Under the terms of 15 U.S.C. 637(e), the Secretary of Commerce is empowered to obtain advanced notice of proposed acquisitions by defense agencies which are expected to exceed \$10,000. A synopsis of each proposed acquisition will be published in the Commerce Business Daily.

Defense FAR Supplement 5.203 mandates a fifteen-day delay from synopsis publication for issuance of competitive solicitations, and thirty days for research and

development contracts (6:5.203). For sole-source acquisitions, negotiations may not commence prior to thirty days from date of publication (6:5.207(d)(70)).

The Defense FAR Supplement contains a pertinent exception to the requirement for advanced publication of proposed acquisitions. Exception (iv) relieves the contracting officer of the requirements of the subpart if the procurement is:

. . . of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at FAR 5.203. (6:5.202)

Subpart 5.3--Synopsis of Contract Awards. The Defense FAR Supplement requires Congressional notification of all proposed contract awards over \$3,000,000. The AF FAR Supplement specifies submission of this notification to arrive three working days before notification of the award to the contractor.

The AF FAR Supplement provides for deviations of the above provisions, in emergency situations, when it is clearly in the public interest to award the contract at the earliest possible date. Deviation requests must be verbally transmitted to the Office of Legislative Liaison.

Subpart 5.5--Paid Advertisements. Subpart 5.5, while not restricting the use of broadcast media for the purpose of paid advertisements, requires advance approval

for the placement of advertisements in a newspaper medium. Approval authority has been delegated to the head of the contracting activity. No exceptions or waivers are addressed under this subpart.

Part 6--Competition Requirements

Part 6 prescribes policies and procedures to promote full and open competition in the acquisition process. Contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. Certain restrictions are placed on the contracting process by Subparts 6.2 and 6.3.

Subpart 6.2--Full and Open Competition After Exclusion of Sources. Subpart 6.2 provides for the establishment or maintenance of alternative sources of supply to maintain competition or to make available a facility, producer, manufacturer, or supplier in cases of national emergency or industrial mobilization. Utilization of this subpart requires a determination by the head of the contracting activity or his deputy (nondelegable) that such exclusion is in the interest of national defense. No contingency waivers are provided.

Subpart 6.3--Other Than Full and Open Competition. Contracting without providing for full and open competition is a violation of statute unless the conditions in

10 U.S.C. 2304(c), Competition Requirements, are applicable. The exception to full and open competition which would most likely be applicable in a national emergency or full mobilization environment is contained in FAR 6.302-2, Unusual and Compelling Urgency, which states:

When an agency's need for supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.
(8:6.302-2)

Use of this exception requires a justification and approval. However, the justification may be completed and approval obtained after contract award, if the delay would be unreasonable. Justification approval levels for proposed contracts are:

- (a) not exceeding \$100,000, at a level above the contracting officer;
- (b) over \$100,000 but not exceeding \$1,000,000, by the competition advocate for the procuring agency;
- (c) over \$1,000,000 but not exceeding \$10,000,000, by the head of the procuring activity, or his designee;
- (d) over \$10,000,000 by the senior procurement executive of the agency.

There are no waivers or exceptions to the above approval levels.

Part 7--Acquisition Planning

FAR Part 7 and its supplements are dedicated to describing the procedures used by agencies to develop overall strategies for the management of acquisitions. The requirements for development of formal acquisition plans and their approval may require streamlining in an emergency situation.

Subpart 7.1--Acquisition Plans. FAR policy requires agencies to perform acquisition planning to promote and provide full and open competition to ensure that the Government meets its needs in the most effective, economical, and timely manner. The agency head or his designee will ensure that no contract is entered into without full and open competition because of a lack of acquisition planning.

The agency head is responsible for establishing procedures for waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.

The Defense FAR Supplement requires the preparation of a formal acquisition plan for all production and service contracts expected to exceed \$15,000,000 for all years or \$5,000,000 for any fiscal year. The Air Force FAR Supplement lowers the threshold for production

contracts to \$5,000,000 or more, estimated total acquisition costs. Approval levels for acquisition plans may be determined by the individual commands; however, certain acquisition plans may require approval by the Air Force Senior Procurement Executive. No waiver of the requirement for formal acquisition planning or approvals was found.

Part 8--Required Sources of
Supplies and Services

Part 8 of the FAR mandates the following prioritization of sources for supplies and services:

(a) supplies

- (1) agency inventories
- (2) excess from other agencies
- (3) Federal Prison Industries, Inc. (FPI)
- (4) procurement list of the Committee for Purchase from the Blind and Other Severely Handicapped
- (5) wholesale supply sources, i.e., General Services Administration (GSA) stock program, Defense Logistics Agency (DLA), Veterans Administration (VA), and military inventory control points

- (6) mandatory Federal Supply Schedules
- (7) optional Federal Supply Schedules
- (8) commercial sources

(b) services

- (1) procurement lists of the Committee for Purchase from the Blind and Other Severely Handicapped

(2) mandatory Federal Supply Schedules
(3) optional Federal Supply Schedules
(4) Federal Prison Industries, Inc. or
commercial sources

Additionally, Part 8 identifies specific sources for certain supplies and services: jewel bearings, public services, printing, Automated Data Processing (ADP) and telecommunications, leased motor vehicles, strategic and critical materials from excess GSA stockpiles, and helium. A further requirement for the supply of nuclear materials through the Department of Energy is specified.

The purchase of supplies and services from other than the sources listed above is permitted under conditions of public exigency. However, the FAR is unclear as to whether this authorization permits a reordering of the above priorities if emergency conditions exist.

Subpart 8.1--Excess Personal Property. FAR policy requires the use of excess personal property (of another agency) prior to requisitioning from other sources. GSA holds primary responsibility for the identification and control of excess personal property. A positive effort must be made to fulfill material requirements from excess stock prior to initiating contracting action. Subpart 8.1 contains no waiver provision.

Subpart 8.4--Ordering From Federal Supply Schedules. Subpart 8.4 describes the Federal Supply Schedule program directed and managed by GSA. Generally, an executive agency must determine if supplies or services are available from such schedules prior to soliciting commercial sources. Schedules are categorized as mandatory or optional.

An exception to the mandatory use of Federal Supply Schedules is contained in FAR 8.404-1 and the Defense Supplement thereto. Under this exception, schedules need not be used, if an urgent requirement exists and the offered delivery is unacceptable. The Defense Supplement to FAR 8.404-3 further states that normal procedures of obtaining waivers from GSA need not be followed in emergency situations.

Subpart 8.6--Acquisition From Federal Prison Industries (FPI). This provision requires the purchase of items contained in FPI schedules in accordance with the priority of sources contained in FAR Part 8. An exception to this provision is permitted when public exigency requires immediate delivery or performance.

Subpart 8.7--Acquisition From the Blind and Severely Handicapped. Subpart 8.7 implements the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c). The Act requires

the purchase of supplies or services on the procurement list if they are available within the period required.

The provisions contained in Subpart 8.7 specifically state that "no other provision of the FAR shall be construed as permitting an exception to the mandatory purchase of items on the procurement list" (8:8.704(b)). However, a specific purchase exception may be granted by the nonprofit agency involved, if the supplies or services cannot be provided in the time period required. A general waiver does not exist.

Subpart 8.8--Acquisition of Printing and Related Supplies. Subpart 8.8 limits the acquisition of printing and related supplies as required in 44 U.S.C. 501, 502, 504, and 1121. Under these provisions, all printing must be performed by the Government Printing Office, unless approved by the Joint Committee on Printing, Congress of the United States. Approval requests must be submitted through the HQ USAF Reprographics Management and Printing Procurement Branch. No waiver of this provision is included.

Subpart 8.70 (DFARS)--Coordinated Procurement. Subpart 8.70 addresses the purchase of requirements of all military departments by a designated purchasing agency. As such, it applies only to those requirements designated for coordinated procurement.

Application of coordinated procurement provisions may be disregarded under emergency conditions. A copy of the contractual instrument and a statement of the emergency must be provided to the designated purchasing activity. Blanket waiver provisions do not exist.

Subpart 8.71 (DFARS)--Commodity Assignment. Commodity assignments have been made to the various DOD agencies, military departments, and GSA. Procurement of requirements described in a commodity classification is the responsibility of the assigned agency. Emergency procurements are excluded from this provision. A determination to exclude an acquisition must be made by the requiring department.

Subpart 8.73 (DFARS)--Miniature and Ball Bearing Instruments. Subpart 8.73 requires the acquisition and use of miniature and instrument ball bearings manufactured in the United States or Canada. Exception to the application of the subpart and related clauses is provided, when the contracting officer determines that the urgency of the requirement necessitates delivery from a nondomestic source.

Subpart 8.74 (DFARS)--Precision Components for Mechanical Time Devices. Subpart 8.74 prescribes restrictions on the acquisition and use of precision components

for mechanical time devices from sources other than the United States and Canada. An exception is provided in the case of urgent requirements, as determined by the contracting officer.

Subpart 8.75 (DFARS)--High-Purity Silicon. Subpart 8.75 restricts the purchase of high-purity silicon and items containing high-purity silicon from sources other than the United States and Canada, except for small purchases, commercial items, and overseas purchases for overseas use. No exception is provided for urgent requirements.

Part 9--Contractor Qualifications

Part 9 addresses the policies and procedures used to determine the responsibility and eligibility of prospective contractors. Portions of this part were found to restrict the selection of sources, and thereby possibly inhibit an expedited acquisition process.

Subpart 9.4--Debarment, Suspension, and Ineligibility. Subpart 9.4 contains punitive provisions for contractors found guilty of the violation of various civil and criminal activities. The Defense FAR Supplement provides for the waiver of these provisions if urgency of the requirement so dictates. The waiver determination must be made by the Secretary of the Air Force or his designee.

Subpart 9.5--Organizational Conflicts of Interest.

Subpart 9.5 provides rules and procedures for identifying and resolving organizational conflicts of interest, which might bias a contractor's judgment or produce an unfair competitive advantage.

Application of the rules and procedures in this subpart may be waived by the agency head if their application would not be in the Government's interest.

Part 10--Specifications, Standards
and Other Purchase Descriptions

Part 10 prescribes policies and procedures for using specifications, standards, and other purchase descriptions in the acquisition process. Use of specifications and standards listed in the Index of Federal Specifications and Standards is mandatory.

Exception to the above requirement of mandatory usage is provided under public exigency.

Part 12--Contract Delivery
or Performance

Part 12 provides policies and procedures concerning delivery and performance under contracts for supplies and services. Urgency of need is considered an important factor in the determination of contract schedules, and a means of ensuring expedited delivery is provided in Subpart 12.3.

Subpart 12.3--Priorities, Allocations, and Allotments. Subpart 12.3 implements Department of Commerce regulations which prescribe the policies and procedures relating to the Defense Priority and Allocation System (DPAS). The Department of Commerce has the responsibility of establishing basic priorities and allocations of scarce resources. The Defense Supplement to this subpart indicates these priorities and allocations will be published in DOD Instruction 4400.1, DOD Priorities and Allocations Manual.

While the existence of the DPAS is intended to assist in the mobilization of the nation's economic resources in a national emergency, it is conceivable that the published priorities and allocations may not accurately reflect our true needs. Therefore, DOD Instruction 4400.1 contains predetermined deviations to the rules and regulations published in the manual.

Part 13--Small Purchases and Other Simplified Purchase Procedures

Part 13 prescribes the policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount not to exceed the regulatory limit of \$25,000. No waiver to this limitation is provided.

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CONTRACTING UNDER CONDITIONS OF NATIONAL EMERGENCY/FULL

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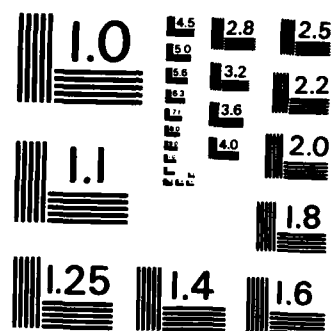
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Subpart 13.4--Imprest Funds. The FAR provides that imprest funds may be used for small purchases not to exceed \$300 under emergency conditions. AFFARS guidance on this subpart directs that imprest funds cashiers will not be subject to the jurisdiction of the contracting officer when located with a deployed tactical organization under emergency conditions. Other limits for maximum transaction amounts may be established, but must be approved by the Department of the Treasury for each agency.

Part 15--Contracting by Negotiation

Negotiations are considered a viable competitive procedure, if the conditions for sealed bidding cannot be met. However, the use of negotiations entails the meeting of several specific requirements which could hinder the rapid acquisition of urgent needs.

Subpart 15.1--General Requirements for Negotiation. Included in this subpart is the policy that negotiated contracts will be awarded on a competitive basis to the maximum practical extent. The AF FAR Supplement provides for advance justification of sole source acquisitions in excess of \$1,000,000. In preparing such a justification, if urgency is cited as a circumstance requiring sole source acquisition, the preparing activity must specifically explain the time constraint (e.g., mandated by law, Congressional requirement, or national defense) and why only

one contractor can meet the requirement. The contracting officer is the final authority for sole source approval within the limits of his authority. Sole source approvals for proposed acquisitions exceeding \$300,000 must be approved by the head of the contracting activity (HCA). Proposed acquisitions under Section 8(a) of the Small Business Act and those of unusual and compelling urgency are exempted from the requirement of HCA approval. No other waivers or exceptions are provided.

Subpart 15.8--Price Negotiation. The Truth in Negotiation Act, Public Law 87-653 (10 U.S.C. 2306 (f)), requires submission and certification of cost and pricing data by prime contractors and subcontractors before award of any negotiated contract expected to exceed \$100,000. The requirement for cost and pricing data may only be waived by the Secretary of the Air Force.

Subpart 15.8 also contains a minimum threshold requirement for utilization of field pricing support. A field pricing report must be obtained before negotiating any contract in excess of \$500,000, unless information is available to the contracting officer which permits a determination of price reasonableness. No specific waiver or exception is provided; however, field pricing support may be exempted by agency regulations.

Part 16--Types of Contracts

To maintain the largest possible degree of flexibility in the contracting process, the FAR permits a considerable amount of freedom in the selection of a contract type. Letter contracts may well be the contract type of choice in an emergency situation, and their use is permissible. However, the use of a letter contract requires advance approval which may, in itself, cause an unacceptable delay.

Subpart 16.6--Time-and-Materials, Labor-Hour, and Letter Contracts. Subpart 16.6 describes a letter contract as a written preliminary instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. A letter contract may be used when the Government's interest demands that the contractor be given a binding commitment so that work can start immediately, and the negotiation of a definitive contract is not possible in sufficient time to meet the requirement.

Letter contracts may only be used upon a determination by the head of the contracting activity that no other contract type is suitable. For AFLC, this approval authority is delegated to the Deputy Chief of Staff for Contracting/Manufacturing. No contingency delegation is provided.

Part 19--Small Business and Small Disadvantaged Business Concerns

Part 19 implements acquisition-related sections of the Small Business Act (15 U.S.C. 631 et seq.), applicable sections of the Armed Services Procurement Act (10 U.S.C. 2301 et seq.), the Federal Property and Administration Services Act (41 U.S.C. 252), and Executive Order 12138, 18 May 1979. Specific limitations on contracting activities are contained in the following subparts.

Subpart 19.5--Set-Asides for Small Business. The purpose of small business set-asides is to award certain acquisitions exclusively to firms determined to be small businesses in accordance with Subpart 19.1. Subpart 19.5 requires the contracting officer to determine if an acquisition should be set-aside. Should the cognizant Small Business Administration (SBA) representative disagree with the contracting officer's determination not to set-aside an acquisition, a process of appeal is to be followed to resolve the conflict. The appeal process contains a fifteen-day grace period, within which the SBA may reply to the action. During this period the acquisition process is effectively suspended.

The contracting officer need not honor a request for suspension of an acquisition if contract award and performance is deemed to be in the public interest. No

other deviation or waivers of the set-aside determination and appeal process exist.

Subpart 19.7--Subcontracting with Small Business and Small Disadvantaged Business Concerns. Subpart 19.7 requires the submission, review, and approval of a subcontracting plan in all acquisitions or contract modifications which are expected to exceed \$500,000 and have subcontracting possibilities. No exceptions or waivers to this subpart are included.

Subpart 19.8--Contracting with the Small Business Administration (The 8(a) Program). Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with other agencies and to let subcontracts to eligible firms. The contracting officer is authorized to award contracts at his discretion, based upon mutually agreeable terms and conditions. If the SBA and the contracting officer fail to agree on a set-aside, the matter may be appealed to the agency head by the SBA's Administrator within fifteen business days. No waiver or exceptions to the above requirement are provided.

Part 22--Application of Labor Laws
to Government Acquisitions

Part 22 provides guidance on labor relations with respect to the acquisition process. Certain policy prohibitions and requirements may impede the contracting process.

Subpart 22.1--Basic Labor Policies. Subpart 22.1 deals with general policies regarding contractor labor relations as they pertain to the acquisition process. The general policy stipulates that agencies shall remain impartial concerning any dispute between labor and contractor management, and not undertake the conciliation, mediation, or arbitration of a labor dispute. Agency actions are restricted to notification of the appropriate mediation agency, furnishing to parties of a labor dispute information on adverse impacts to Government programs, and seeking a voluntary agreement to permit uninterrupted acquisition of supplies and services.

No waiver or exceptions to Agency limitations are provided; however, major policy actions, including plant seizures or injunctive action, may be referred to the Office of the Assistant Secretary of Defense (Acquisition and Logistics) for action.

Subpart 22.8--Equal Employment Opportunity. Subpart 22.8 requires that all prospective contractors and

subcontractors be in compliance with equal opportunity rules and regulations, in accordance with Executive Order 11246. The general requirements provide that no contracting officer or contractor shall contract for supplies or services in a manner so as to avoid applicability of the requirements of EO 11246. Specifically, this subpart mandates the preaward clearance of contracts and subcontracts of \$1,000,000 or more, with the Office of Federal Contract Compliance Programs (OFCCP).

Exceptions to the above requirements are included. If an urgent requirement exists, the contracting officer must first notify the OFCCP for an early approval. If the OFCCP cannot comply, the contracting officer must request approval for contract award from the head of the contracting activity. The agency head may also determine that an individual contract is essential to national security, and authorize its award without complying with this subpart.

Subpart 22.10--Service Contract Act of 1965.

Subpart 22.10 prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965 (41 U.S.C. 351-358). The Act provides for payment of minimum wages as specified by the Fair Labor Standards Act (29 U.S.C. 206), and provides for minimum fringe benefits, and safe and sanitary working conditions. Employees of

service contractors must be notified of minimum allowable compensation and equivalent Federal employee classifications and wage rates. The contracting officer must notify the Department of Labor thirty days prior to release of a solicitation for a service contract, to obtain a wage determination.

Exception to the thirty-day notice is provided for situations with exceptional circumstances which prevent timely filing. No other exception to the requirements of the Act is provided.

Subpart 22.13--Special Disabled and Vietnam Era Veterans. Subpart 22.13 implements the Vietnam Era Veterans Readjustment Assistance Act of 1972 (38 U.S.C. 2012), and Executive Order 11701, 24 January 1973. Contractors are required to list employment openings with the local employment service and to take affirmative action to employ disabled and Vietnam veterans. Contractors found to be in noncompliance may be suspended or debarred.

The FAR stipulates that individual contracts and groups of contracts may be waived from the requirements of this subpart, if it is in the national interest to do so. However, the Defense FAR Supplement mandates that only the Secretary of Defense may grant waivers to this subpart.

Subpart 22.14--Employment of the Handicapped. Subpart 22.14 implements Section 503 of the Rehabilitation

Act of 1973 (29 U.S.C. 793) and Executive Order 11758, 15 January 1974. Contractors are required to take affirmative action to employ handicapped individuals.

The FAR allows for waiver of individual or groups of contracts, if such a waiver is in the national interest. However, the Defense FAR Supplement mandates that only the Secretary of Defense may grant waivers to this subpart.

Part 23--Environment, Conservation,
and Occupational Safety

Part 23 prescribes acquisition policies and procedures in support of Government programs for the protection of the environment and energy conservation. Certain provisions may impede the contracting process.

Subpart 23.1--Pollution Control and Clean Air and Water. Subpart 23.1 requires that executive agencies conduct their acquisition activities in a manner that supports enforcement of the Clean Air Act (42 U.S.C. 2401), the Clean Water Act (33 U.S.C. 1251), and Executive Order 11738, 12 September 1973.

The agency head, in consultation with the Environmental Protection Agency Administrator, may exempt any contract or class of contracts from the provisions of this subpart, for a period of one year, when it is in the paramount interest of the Government to do so.

Part 25--Foreign Acquisition

Part 25 represents an amalgamation of statutes and regulations pertaining to the acquisition of foreign supplies and services. Some of the requirements contained in this part restrict the use of certain sources in certain circumstances. Others provide useful exceptions to normal procedures in emergency situations.

Subpart 25.1--Buy American Act-Supplies. The Buy American Act requires that only domestic end products be acquired for public use, except for usage outside the United States and its territories.

The agency head may exempt articles, materials, or supplies from the provisions of the Act, upon determination that domestic preference would be inconsistent with the public interest.

Subpart 25.4--Purchases Under the Trade Agreements Act of 1979. Subpart 25.4 provides policies concerning acquisitions subject to the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582). It is stipulated that no purchases will be made of products subject to the Act unless the products are from a designated country.

The provisions of this subpart do not apply to purchases of arms, ammunition, or war materials or purchases indispensable for the national security or the national defense. The Air Force FAR Supplement requires

that requests for exclusion must include supporting rationale, and shall be sent through contracting channels to HQ USAF. No exception to the exclusion request procedure is provided.

Subpart 25.6--Customs and Duties. All shipments of imported supplies purchased under Government contracts are subject to the usual U.S. Customs entry and examination requirements. Additionally, those shipments are also subject to duty, unless the agency obtains an exemption. Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) lists supplies for which exemptions may be obtained.

Defense FAR Supplement 25.604-70 provides that any acquisition of foreign supplies which constitutes an emergency purchase of war material shall be accorded duty-free entry. An emergency purchase of war material includes supplies comprised of weapons, munitions, aircraft, vessels or boats; agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of the supplies listed above. Such an acquisition must be made in time of war or during a national emergency. Immediate release permits

may be obtained upon filing appropriate U.S. Customs forms and a duty-free certificate.

Supplies for Government-operated vessels or aircraft may also be withdrawn from U.S. Customs free of duty and internal revenue taxes as provided in 19 U.S.C. 1309(a). Application for immediate entry and release of Government shipments must be filed with U.S. Customs, and may be approved for indefinite periods of time. No exception to U.S. Customs permits or duty-free certificates is provided.

Subpart 25.7--Restrictions on Certain Foreign Purchases. The Government places restrictions on the acquisition of supplies or services for use outside the United States, which could not lawfully be imported into the United States. Current restrictions include any supplies or services originating from or transported through North Korea, Vietnam, Cambodia, or Cuba.

Exceptions to the above policy for small purchases may be approved by the contracting officer. For other than small purchases, exceptions must be approved by the Secretary of the Department concerned.

Subpart 25.70 (DFARS)--Appropriations Act Restrictions. Various Defense Appropriations Acts have placed restrictions on the availability of appropriated funds for the acquisition from foreign sources of food, clothing, cotton, wool, woven silk and silk blends, spun silk yarn

for cartridge cloth, synthetic fabric, specialty metals, hand or measuring tools, manual typewriters, hulls and superstructures of naval vessels, and buses.

No specific exception for emergency purchases in the public interest is provided, except that the above items and commodities may be acquired if domestic sources cannot fulfill quantitative and qualitative requirements. However, this general exception is not provided in the cases of hand or measuring tools and manual typewriters. Requests for approval to acquire the above designated supplies from a foreign source must be approved by HQ USAF.

Part 27--Patents, Data and Copyrights

Part 27 prescribes detailed policy and procedures which address data and patent rights. While the vast majority of the coverage under this part was not found to impede the contracting process in any emergency, one subpart of the Air Force FAR Supplement was determined to have a limited degree of applicability within the research scenario, and has, therefore, been included.

Subpart 27.490 (AFFARS)--Expiration of Limited/Restricted Rights. Air Force policy is to use the competitive negotiation process to acquire data rights for follow-on acquisition on a competitive basis. The requirement of this subpart provides that prime contractors and

all subcontractors must relinquish the rights to proprietary data at a point in time five years after first production of the item. This requirement is applicable to production contracts with life cycle spare parts requirements in excess of \$500,000. Modifications and waiver of these provisions must be approved by the head of the contracting activity for AFSC and AFLC, and by HQ USAF for all other commands. No contingency delegation of this waiver authority is provided.

Part 30--Cost Accounting Standards

The application of accounting standards is a necessary and desirable objective. However, a number of requirements were found to have a potential adverse impact on a streamlined contracting process.

Subpart 30.2--Disclosure Requirements. Public Law 91-379 (50 U.S.C. App 2168) requires certain national defense contractors and subcontractors to comply with Cost Accounting Standards (CAS), published by the Cost Accounting Standards Board (CASB). For proposed contracts not meeting coverage exemptions, the contractor must submit a disclosure statement describing the contractor's accounting practices and procedures prior to contract award. Award may not be made until a written determination of the disclosure statement's adequacy has been made by the Administrative Contracting Officer.

The agency head may determine that it is impractical to secure the disclosure statement, and authorize the contract award. This authority may not be delegated.

Subpart 30.3--CAS Contract Requirements. This subpart provides for the inclusion of various CAS contractual clauses in all nonexempt contracts. These clauses require disclosure of actual accounting practices and administrative requirements.

If a contractor refuses to accept all or part of the requirements of CAS, and it is determined to be impractical to obtain the supplies or material elsewhere, a waiver of the disputed requirements may be sought. Waivers may be granted only by the CASB.

Part 32--Contract Financing

Part 32 provides policies and procedures for contract financing and related administrative matters. Subparts 32.3 and 32.7 address two aspects of contract financing which may directly impact the acquisition process in the event of a national emergency.

Subpart 32.3--Loan Guarantees for Defense Production. Title III of the Defense Production Act of 1950 (50 U.S.C. App 2091) provides for loan guarantees by Federal Reserve banks, on behalf of guaranteeing agencies, to enable contractors to obtain financing from private

sources under contracts for the acquisition of supplies and services for the national defense. Such financing is to be used for contractor working capital; however, exceptions may be made for incidental or minor expansion. Loan guarantees are subject to the maximum amounts authorized by Congress on an annual basis, and subject to various limitations contained in the statute.

A certificate of eligibility must be prepared on an individual basis by the contracting officer justifying the essential nature of the supplies or services. Approval of certificates has been delegated to HQ AFSC. In addition to eligibility requirements, loan guarantee applications must be made with the cognizant Federal Reserve bank. The Federal Reserve bank will make any necessary credit investigations to supplement the information furnished by the applicant. No exceptions or provision for expedited procedures exist.

Subpart 32.4--Advance Payments. Subpart 32.4 provides policies and procedures for advance payments on prime contracts and subcontracts, as authorized in the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), the Armed Services Procurement Act (10 U.S.C. 2307), Public Law 85-804 (50 U.S.C. 1431-1435), and Executive Order 10789, dated 14 November 1958. Advance payments are considered the least preferred method of

contract financing. An authorization to use advance payments must meet a number of statutory requirements including:

- (1) the contractor must provide adequate security;
- (2) the amount of advance payments must not exceed the unpaid contract price;
- (3) the agency head or his designee must determine that the advance payment is in the public interest, or facilitate the national defense.

The Air Force FAR Supplement (AFFARS) requires the determination for advance payments to be made by SAF/FMB. No exception to or delegation of this approval authority, in the event of a national emergency, was found.

Subpart 32.5--Progress Payments Based on Costs.

Subpart 32.5 provides the policies and procedures for customary and unusual progress payments. The contracting officer may grant a progress payment rate higher than the customary rate only upon approval by the agency head. The AFFARS stipulates that all requests for unusual progress payments must be approved by SAF/FMB. Additionally, the Defense FAR Supplement indicates that no contract shall be modified to authorize unusual progress payments in excess of \$25,000,000 without the prior written consent of the Deputy Assistant Secretary of Defense (Acquisition and

Logistics). No exceptions to or delegations of these approval authorities were found.

Subpart 32.7--Contract Funding. Subpart 32.7 implements 31 U.S.C. 1341, Limitations on Expending and Obligating Amounts (Anti-Deficiency Act). No officer or employee of the Government may create or authorize an obligation in excess of the funds available. Before executing a contract, the contracting officer must obtain written assurance from responsible fiscal authority that adequate funds are available. In lieu of written assurance, the contracting officer must condition the contract upon availability of funds. No waiver of this subpart exists.

Part 33--Disputes and Appeals

Part 33 implements the Contract Disputes Act of 1978 (41 U.S.C. 601-613) which establishes procedures and requirements for asserting and resolving claims by or against contractors arising under or relating to any contract covered by the Federal Acquisition Regulation, other than contracts with foreign governments or international organizations.

Prior to passage of the Act, contractors were obligated to continue performance only when claims arose under a contract. Section 6(b) of the Act authorizes agencies to require a contractor to continue contract

performance even in the event of a claim relating to a contract. The Defense FAR Supplement authorizes an alternate contractual provision for the acquisition of aircraft, naval vessels, missiles, tracked combat vehicles, and related electronic systems. Additional contracts or classes of contracts may include performance guarantees, if it is determined by the Department to be vital to the national security.

Subpart 33.1 (AFFARS)--Protests. Subpart 33.1 provides detailed Air Force procedures for processing and resolving protests by contractors. Of interest is AF FAR Supplement 33.104(b), Protest Before Award. This section provides Air Force policy that contract awards will be made prior to protest resolution only in exigent cases, upon full justification in writing, and only upon approval by HQ USAF. No exception to this procedure is provided.

Part 43--Contract Modifications

The process of modifying contracts is covered by this part in considerable detail. The majority of the procedures were found to be expeditious, but the restrictions on contract funding are reiterated in Subpart 43.1, and therefore warrants inclusion.

Subpart 43.1--Contract Modifications-General.

The contracting officer may not execute a contract modification that causes an increase in expenditures without first having obtained written confirmation of funds availability, except when conditioned upon availability of funds, or limitation of costs or funds. No waiver or other exceptions are provided in this subpart.

Part 50--Extraordinary Contractual Actions

Part 50 implements the emergency authority granted by P.L. 85-804 as amended by P.L. 93-155 (50 U.S.C. 1431-1435). Delegations of this authority are contained in Executive Order 17089, dated 14 November 1958. The President is empowered to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to defense contracting, whenever the President considers that such action would facilitate the national defense. FAR policy provides that this authority must not be used in a manner that encourages carelessness or laxity, and that this authority may not be relied upon when other adequate legal authority exists within the agency.

Part 50 of the FAR contains the following limitations on the exercise of the above authority. The Act is not authority for--

(1) use of cost-plus-a-percentage-of-cost system of contracting;

(2) circumvention of laws pertaining to profit or fee limitation;

(3) waiver of bonds required by law.

Authority under the Act may not be used unless--

(1) it is determined the action will facilitate the national defense;

(2) other legal authority is deemed lacking or inadequate;

(3) actions are within the limits of appropriated funds and statutory contract authorizations.

For proposed legislation of any amount over \$25,000,000, the Senate and House Armed Services Committees must be notified in writing. Congress is permitted sixty continuous days of session in which to disapprove the proposed action.

The exercise of this authority below the Secretarial level is limited to \$50,000. Deviations from this authority must be approved by the Secretary of Defense.

Part 52--Solicitation Provisions
and Contract Clauses

Part 52 gives instructions for using provisions and clauses in solicitations and/or contracts, and sets forth the full text of the clauses and provisions prescribed by the regulation. Authority for this part is

found in 40 U.S.C. 468(c); Chapter 137 10 U.S.C. and 42 U.S.C. 2453(c). Certain contract clauses and solicitation provisions contained in Part 52 were found to contain requirements which might impede an expedited acquisition process during a national emergency or full mobilization scenario. A listing of these clauses and provisions is contained in Appendix B, Federal Acquisition Regulation Clauses.

Department of Defense Directives
and Air Force Regulations

In addition to the Federal Acquisition Regulation, six DOD and Air Force directives or regulations were identified which contained material pertaining to contracting in a national emergency/full mobilization environment. A synopsis of each directive or regulation is provided in numerical order by level of authority within the Department of Defense.

1. DOD Directive 4005.1

DOD Industrial Preparedness Production Planning,
July 28, 1972 (7).

The purpose of the directive is to provide policies, procedures, and responsibilities for DOD concerning industrial production planning of national emergency military requirements. DOD Directive 4005.1 directs the Department of Defense to give consideration to suspending or modifying normal procurement procedures to minimize

lead times. The directive also states the DOD should make plans to minimize the administrative lead time involved in the placement of post M-Day contracts. The directive recommends considering the use of letter contracts and industry incentives as time-saving measures.

2. DOD Instruction 4400.1

Priorities and Allocations - Delegation of DO and DX Priorities and Allocations, Authorities, Rescheduling of Deliveries and Continuance of Related Manuals, May 21, 1974 (10).

The provisions of the instruction are applicable to the military departments and other defense agencies. The provisions cover contracting actions within the United States, its territories and possessions, and procurements from overseas when resources are required from the United States. The instruction provides delegations of authority and conditions and responsibilities for the use of DO and DX ratings.

3. DOD Directive 4245.9

Competitive Acquisitions, August 17, 1984 (3).

This directive provides policy, prescribes procedures, and assigns responsibility concerning the competitive acquisition of goods and services for the Department of Defense. The directive requires the heads of DOD components to ensure the following actions:

(1) noncompetitive contract actions are justified, documented, and action is taken to ensure competition in follow-on procurements;

(2) conduct market research to identify competitive potential before any noncompetitive procurement decision is irrevocable;

(3) challenge requirements and procedures that inhibit competition and document problems.

An avenue for waiver of competitive requirements during emergency situations is potentially available through paragraphs E.3.b and E.5 of the directive. They state that competition shall be used in follow-on procurements to the maximum extent possible and explanations why competition is not practicable shall be developed. Declaration of a national emergency, with the accompanying requirement for reduced administrative contracting lead time, should provide adequate noncompetitive justification if needed.

4. DOD Directive 5100.34

Defense Contract Financing - Guaranteed Loans,
December 8, 1962 (5).

The directive designates the military departments and the Defense Logistics Agency as the guaranteeing agencies in accordance with 50 U.S.C. App 2091-2092. The directive and 50 U.S.C. App 2091-2092 give the authority

to guarantee or provide loans to contractors when necessary to expedite production and deliveries of materials or services for national defense.

5. DOD Directive 7220.8

Policies and Procedures Governing the Use of the Authority of Section 3732, Revised Statutes, August 16, 1956 (9).

The directive provides policies and procedures for procurements when the intended purchases are not specifically authorized by law or authorization. In addition, the directive provides reporting requirements for such procurements.

6. Air Force Regulation 70-7

Contingency Contracting Support Program, April 20, 1984 (12).

This regulation establishes the requirement that a Contingency Contracting Support Program provide twenty-four-hour capability for responsive contracting action during emergencies and deployments. It applies to all Air Force installations. The responsibility for developing contingency plans is delegated primarily to the various major commands and supporting contracting activities. The plans must provide for contracting actions to be completed according to all requirements of law, executive orders, and

regulations that are applicable. Only prior approved deviations from contracting requirements are permitted.

V. Analysis and Conclusions

Chapter V contains analysis of the data collected and presented in detail in Chapters III and IV. The purpose of the analysis was to answer the research questions put forth in Chapter I. Accordingly, the results of the analysis and subsequent conclusions are presented in the same sequence as the research questions.

Research Question One

Research question one asked, "What legislation pertaining to contracting is applicable in a national emergency or full mobilization environment." A comprehensive review of United States Code Annotated identified sixty-six code citations considered applicable in a national emergency or full mobilization, as described in the research scenario. The material included in the citations covered a wide range of contracting-related areas. A synopsis of each code citation was presented in Chapter III.

Research Question Two

The second research question was, "Of the legislation identified, which contain waivers or exceptions that would shorten the contracting process in the event of a national emergency or full mobilization?" The sixty-six

citations summarized in Chapter III were used to answer this question and were categorized into three primary subject areas: (1) Acquisition of Property and Services; (2) Socio-economic Issues; (3) Authorities and Procedures (Table I). General characteristics of the information contained in Table I, United States Code References, were analyzed and further broken down into specific topics within the primary subject areas.

General Characteristics. The sixty-six citations were almost equally divided among the three primary subject areas with no area containing more than twenty-eight or less than eighteen citations. The Acquisition of Property and Services and Authority and Procedures categories combined, contained 73 percent of the citations. Acquisition of Property and Services and Authority and Procedures predominately involved DOD methods, authorities, and procedures for obtaining required property and services. With the exception of two statutes involving contract funding authority (Reference Numbers 27 and 36), all others contained avenues for waiver or exception at one or more approval authority levels. The waivers or exceptions should have an immediate effect of shortening the contracting process. The socio-economic statutes comprised only 27 percent of the total but represented an area which could directly impact a large portion of the American

TABLE I
UNITED STATES CODE REFERENCES

	Socio-economic Issues	Acquisition of Property or Services	Authorities and Procedures
Congress	19, 24, 30, 31	33, 45, 47	1, 4, 20, 27, 28, 36, 37, 48, 53, 54, 56, 59
President	11, 18, 26, 29, 32, 41, 42, 43, 44	10, 15, 22, 23, 33, 34, 45, 46, 50, 51, 61, 63	4, 12, 14, 20, 28, 37, 48, 53, 55, 57, 58, 60, 62, 64, 65
Secretary of Defense	17	-	2, 3, 48, 52
Other Executive Agency	25, 35	21	49, 66
Secretary of the Air Force	-	5, 6, 7, 8, 9, 16	13, 36
Contracting Officer	38	-	40

population. This is evident since safety and health of workers, environmental conditions, distribution of Government contracts, and labor provisions can affect either directly or indirectly millions of Americans.

The level of authority at which a determination must be made for a waiver or exception to be instituted ranged from as high as Congress down to the contracting officer. Research revealed six statutes (Reference Numbers 19, 24, 27, 30, 31, 36) which contained no waiver or exception authority. Four of the statutes involved socio-economic issues and the other two concerned funding authority. These would require new legislation on the part of Congress before waiver or exception relief can be realized and have been categorized as Congressional level in the matrix. The majority of the United States Code citations require determinations or actions by either Congress or the President with only 32 percent having an action level at the Secretary of Defense level or below.

Each of the primary areas was further subdivided to highlight specific categories of legislation to facilitate discussion and clarification. These areas are discussed in what is considered to be decreasing order of resistance to approval of the waiver or exception. Socio-economic issues are discussed first, followed by Authority and Procedures and finally Acquisition of Property or Services.

Socio-economic Issues. Probably no other area relating to exceptions or waivers of contracting requirements could cause greater outcry from the American public or debate in Congress than a proposed reduction of socio-economic standards implemented by legislation (Table II). Any digression from the present standards, in the areas of health and safety, environmental pollution, distribution of Government business, or work hours and payment, proposed by the Department of Defense (DOD) to increase deliveries of emergency requirements will most likely be hotly contested. However, this area of legislation may be the most important to DOD and the Air Force in meeting national emergency military purchasing requirements. Socio-economic standards and rules were considered so controversial, particularly those of the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA), the topics were individually selected for in-depth analysis in other study efforts.

OSHA standards and rules have generally been accepted by the American work force as necessary for its protection. There is also broad-based support for the EPA's objectives of reducing, controlling or completely stopping the various types of pollution in the environment. However, American industry does not wholeheartedly share the belief, and in some cases maintains the standards are costly and partially unnecessary (14:9-11).

TABLE II
SOCIO-ECONOMIC ISSUES

	EPA	OSHA	Small Business	Labor Provisions
Congress	19, 30	-	-	24, 31
President	18, 29, 41, 42, 43, 44	-	-	11, 26, 32
Secretary of Defense	-	-	17	-
Other Executive Agency	-	25	-	35, 39
Secretary of the Air Force	-	-	-	-
Contracting Officer	-	-	38	-

The increased cost and time required to comply with strict pollution and health standards may be a formidable stumbling block to DOD obtaining urgently required materials. William E. Durrwacter made the following statement in a report to the Industrial College of the Armed Forces.

In the event of a production surge or full-scale mobilization, many production facilities would have no reasonable means of complying with environmental or health-and-safety regulations without delaying . . . production. (14:36)

Of particular concern are the standby facilities and equipment that may be needed during a national emergency which would not meet EPS and OSHA standards. Unless a certifiable need exists for production of items over and above the maximum capacity of EPA and OSHA complying facilities, the negative political repercussions may not justify exceptions. In addition, even if production requirements can not be met at capacity, strong population support would be necessary to invoke exceptions. Such support would probably only occur in the face of a publicly recognized threat to national security.

The President has authority to at least partially waive six of the eight identified EPA-related statutes while two contain no waivers and would require new legislation. However, the Secretary of Labor has the authority to make exceptions to Occupational Safety and Health

standards he deems necessary to prevent serious damage to national defense.

Labor provisions and procurements from small business and small disadvantaged business concerns may not be an important issue under the scenario of this research. If the country is facing a major threat requiring a declaration of national emergency/full mobilization, the American work force would most likely support increased production through extended work hours and the Government would pay any reasonable wage to get the work accomplished. In addition, all available businesses would be needed, including small and small disadvantaged businesses, to support the increased production effort. However, waiver authorities are available at the Presidential level or below in all but two instances, the Fair Labor Standards Act of 1935 and Veterans Employment Under Federal Contracts.

Acquisition of Property or Services. The legislation in this category (Table III) was considered less controversial than the socio-economic area. However, the authority for acquiring land and lumber by condemnation may be contested by the affected land owners even though the Government will pay a reasonable price for the acquisition. All the statutes provide authority for acquisition actions or exceptions to "business-as-usual" contracting

TABLE III
ACQUISITION OF PROPERTY OR SERVICES

	Lease	Construction	Equipment/ Materials	Land and Natural Resources
Congress	33	-	47	45
President	33	10, 15	22, 23, 34, 50, 61, 63	45, 46, 51
Secretary of Defense	-	-	-	-
Other Executive Agency	-	-	21	-
Secretary of the Air Force	7,16	-	-	5, 6, 8, 9
Contracting Officer	-	-	-	-

limitations. The majority of the referenced legislation requires an initial determination of urgency by the President or Congress. In addition, limitations on the amount of funds available for obligation or Congressional notification prior to contracting actions are required when acquiring land or constructing facilities not previously approved in the annual Congressional authorizations and appropriations. These limitations, combined with the fact that all initial determinations and action must be made at the Secretary of the Air Force level or above, could impede the contracting process while implementing instructions are developed and transmitted to field officers.

Authorities and Procedures. The legislation categorized under Authorities and Procedures (Table IV) contains a variety of national emergency authorities, policies, and procedures. Authority for action is also vested at almost all levels of the executive branch from the President down to the contracting officer. In addition, two of the laws (Reference Numbers 27 and 36) do not contain authority to obligate funds for spares or repair parts in excess of the annual obligation authority. These two plus six other statutes (Reference Numbers 4, 20, 28, 37, 48, and 53) require initial or shared actions on the part of Congress prior to implementation of expedited procedures.

TABLE IV
AUTHORITIES AND PROCEDURES

	Funds/ Appropriations	Mobiliza- tion	Competi- tion	Transporta- tion	Miscellaneous
Congress	27, 36, 53	-	1	4, 48	20, 28, 37, 54, 56, 59
President	53, 64, 65	12, 60, 62	-	4, 14, 48	20, 28, 37, 55, 57, 58
Secretary of Defense	-	52	2	48	3
Other Executive Agency	-	-	-	-	49, 66
Secretary of the Air Force	36	13	-	-	-
Contracting Officer	-	-	-	-	40

The most important legislation involving national emergency contracting authorities, exceptions, or waivers is contained in the National Emergencies Chapter of Title 50. When the President declares a national emergency, no statutory authorities available for use in the emergency shall be used unless the President specifies the provisions of law under which action will be taken. Therefore, DOD and Air Force contracting staffs must ensure the necessary provisions of law for an expedited contracting process are included in the declaration of national emergency. Otherwise, the authorities available are useless.

Congress enacted legislation in 1984 providing new policies and procedures for competitive contracting. The basic impediments of the competition legislation are primarily evident in the implementation of the statutes in the Federal Acquisition Regulation and supplements thereto. The discussion of those impediments is, therefore, addressed in the analysis pertaining to research questions three and four below.

Industrial plant mobilization legislation, including defense industrial reserve and order placement prioritization, provides the President with the authority to develop and maintain the military and economic strength necessary to promote national defense. Although extremely important to contracting for production and delivery of emergency military requirements, analysis of the

legislation in relation to the contracting process is beyond the scope of this research effort. The remainder of the identified legislative subjects, with the exception of control over transportation systems, involve exceptions to routine, generally enforced Government contracting practices, such as cost accounting standards, insurance, cost and pricing data and assignment of claims.

The exceptions provide avenues for time savings for both the contractors and the Government by reducing or eliminating some of the administrative requirements. The Government would be allowed to award contracts and the contractor allowed to commence production without development of detailed accounting systems. This would be important during a national emergency/full mobilization situation where the Government is attempting to increase the production base by directing contracts to businesses who have never been awarded a government contract.

Control over transportation systems and exceptions or waivers of transportation requirements may become a critical factor in a national emergency if a fuel shortage occurs. The necessity to move men, equipment, and supplies and ensure workers are transported to production facilities is essential to meet the massive increases in war material production. Although not directly related to the contracting process, the legislation provides opportunities for more rapid delivery of contracted items.

Summary. Tools are available for achieving shorter contracting and delivery lead times in a national emergency. However, the level of waiver or exception determinations to implement such actions is far removed from the purchasing activities in the chain of command. More than 70 percent of the identified legislation requires action on the part of Congress or the President prior to implementation. The time required for the intermediate command levels to flow down exception or waiver instructions could be several days or even weeks in a hectic environment caused by declaration of a national emergency with an impending major military conflict. The delay in implementing exceptions or waivers could be as devastating in the early stages of a military buildup as not having the exception or waiver at all.

Research Question Three

Research question three asked, "Of the body of material contained in the Federal Acquisition Regulation and its supplements, which provisions contain requirements that are restrictive to the contracting process, that is, a lengthening of contracting lead time, or prohibiting the use of a source?" The review of provisions and policies contained in the Federal Acquisition Regulation and its agency and service supplements indicated that a total of fifty-one requirements could be considered as restrictive

to the contracting process. The provisions identified have been subdivided into two broad categories of restrictions. The first category, designated Category A, identifies FAR provisions which restrict or prohibit a course of action in the contracting process. The second category, designated Category B, permits a course of action in the contracting process, but only upon approval of a higher authority. A complete listing of the FAR provisions contained in each category is presented in Table V.

Research Question Four

Research question four asked, "Of the FAR provisions identified, which contain waivers that would shorten the contracting process in the event of a national emergency/full mobilization, and at what level must they be approved?" To facilitate the data analysis, a subdivision of the identified provisions into classifications by similar subject area was used. The provisions were found to be adequately described by the classifications:

(1) Authority and Procedures, (2) Funding/Cost and Pricing, (3) Socio-economic, and (4) Competition/Sources. The results were tabled in a matrix format to provide a convenient reference.

Restrictive Provisions. The provisions extracted from the FAR and its supplements and codified in this study as Category A provisions were found to contain two

TABLE V
LIST OF CATEGORY A AND CATEGORY B PROVISIONS

CATEGORY A		
5.2	9.4	25.1
5.3	9.5	25.4
7.1	10.0	25.6
8.1	12.3	25.7
8.4	13.0	25.70
8.6	15.8	27.490
8.7	19.5	30.2
8.70	19.7	30.3
8.71	22.8	32.7
8.73	22.13	43.1
8.74	22.14	
8.75	23.1	
CATEGORY B		
1.4	8.8	22.10
1.6	13.4	32.3
5.5	15.1	32.4
6.2	16.6	32.5
6.3	19.8	33.1
7.1	22.1	50.0

forms of waiver. Certain provisions explicitly provided for a waiver, and designated a level of approval. In other cases, the FAR provided an exception to a provision for situations of unusual or compelling urgency. The analysis of this data assumed that a declared national emergency constituted a situation of unusual or compelling urgency, thereby providing authority to use this type of exception. Unless otherwise stated in the provision, the use of the exception for unusual or compelling urgency was considered to be within the authority of the contracting officer. Therefore, the use of the unusual and compelling urgency exception under the research scenario of a declared national emergency would be the same as a waiver of the provision with the approval level established as the contracting officer. This interpretation of the material provided a consistent analysis within the matrix format selected.

The analysis of Category A provisions (Table VI) revealed a range of approval levels for all subject classifications from the Secretary of Defense (SECDEF) down to the contracting officer. The highest frequencies of occurrence were at the approval level, SECDEF, and the lowest approval level, the contracting officer. Although no provisions were found to require a waiver approval level higher than SECDEF, seven of the provisions contained in Category A were found to contain no waivers.

TABLE VI
CATEGORY A--RESTRICTIVE PROVISIONS

	Authority & Procedures	Funding/Cost & Pricing	Socio- economic	Competition/ Sources
None	13.0	32.7, 43.1	-	8.1, 8.75, 19.7, 25.70
Congress	-	-	-	-
Secretary of Defense	7.1, 12.3	30.2	22.13, 22.14 23.1	9.5, 25.1
Other Executive Agency	-	30.3	-	8.7
Secretary of the Air Force	-	15.8	-	9.4, 25.7
Headquarters USAF	-	-	-	5.3, 8.71, 25.4, 25.70, 27.490
Head of the Contracting Activity	-	-	22.8	27.490
Contracting Officer	10.0	25.6	-	5.2, 8.4, 8.6, 8.70, 8.73, 8.74, 19.5, 25.7

A number of these would require Congressional action to provide relief to contracting organizations.

When examined from the point of view of the subject area covered, it was found that almost 66 percent of the provisions identified as restrictive fell into the subject classification, Competition/Sources, with the remainder of the provisions split evenly across the other subject areas.

The Category A provisions classified by subject area as Authority and Procedures, numbered only four. Of these, two were found to require waiver approval by SECDEF (Subparts 7.1 and 12.3) and one (Part 13) had no waiver, requiring Congressional action. Only the provision requiring mandatory usage of federal specifications included an emergency exception at the level of the contracting officer. Those provisions in Category A classified as Funding/Cost and Pricing had a similar profile. High approval levels or no waiver predominated in this classification. In the Socio-economic classification, all Category A provisions were found to have a waiver procedure, but the lowest level of approval was head of the contracting activity, and the majority required approval by the Secretary of Defense.

With a total of 23 Category A restrictions contained in the subject area, Competition/Sources, it was determined that a further refinement of the subject area

would be beneficial to the analysis. Therefore, the overall classification of Competition/Sources was subdivided into the subject areas of Full and Open Competition, Source Restrictions, Foreign Acquisitions, and Small Business (Table VII).

The first subclassification, Full and Open Competition, contained three Category A provisions. Two of these restrictive provisions addressed synopsis requirements. Subpart 5.3 required waiver approval by Headquarters USAF and Subpart 5.2 contained a contingency exception for the contracting officer.

The remaining restriction in the Full and Open Competition subclassification pertains to the expiration of data rights. The nature of this restriction is somewhat peculiar, in that it requires a course of action to be taken which is extremely difficult to achieve, and strongly resisted by defense contractors. Therefore, this provision warranted inclusion in the body of data collected, because its required usage was seen as an impediment to an expedited contracting process. Two levels of waiver approval are provided based on individual major commands.

Source restrictions accumulated eleven restrictive provisions from Category A. The source of most of these restrictions was FAR Part 8, Required Sources of Supplies and Services, and its supplements. Five provisions from

TABLE VII
CATEGORY A--SUBCLASSIFICATION OF COMPETITION/SOURCES

	Full & Open Competition	Source Restrictions	Foreign Acquisition	Small Business
None	-	8.1, 8.75	25.70	19.7
Congress	-	-	-	-
Secretary of Defense	-	9.5	25.1	-
Other Executive Agency	-	8.7	-	-
Secretary of the Air Force	-	9.4	25.7	-
Headquarters USAF	5.3, 27.490	8.71	25.4, 25.70	-
Head of the Contracting Activity	27.490	-	-	-
Contracting Officer	5.2	8.4, 8.6, 8.70 8.73, 8.74	25.7	19.5

this part contained exceptions for emergency situations; one required waiver approval by Headquarters USAF, and one by another executive agency. Two (Subparts 8.1 and 8.75) had no waiver provision. Those without a provision for waiver and the provision requiring approval by another executive agency (Subpart 8.7) appear to be the most critical in terms of a lack of emergency authority.

The two other provisions under the Source Restriction subclassification are contained in Part 9 of the FAR, Contractor Qualifications. In that they deal with serious issues of debarment and conflicts of interest, the approval of waivers is retained by the Secretary of the Air Force and the Secretary of Defense, respectively.

Six provisions classified under Foreign Acquisition are all addressed by Part 25 of the FAR. Most of the policies and procedures contained in Part 25 are the direct result of legislative statute. Accordingly, four of the provisions required waiver approvals at a level of HQ USAF or higher. In fact, only small purchases from communist areas was found to be within the authority of the contracting officer. Additionally, portions of the restrictions contained under Subpart 25.70, Defense Appropriations Act Restrictions, had no contingency exception, indicating a need for Congressional action.

The final subclassification, Small Business, contained two restrictions to the contracting process.

Contingency authority was given to the contracting officer in one case (Subpart 19.5). The other, a requirement for an approved subcontracting plan (Subpart 19.7), contained no such provision.

Provisions Requiring Approval. The analysis of Category B provisions differed somewhat from the treatment of Category A provisions. Category B provisions, as described earlier, constitute those provisions which have the potential to impede the contracting process, by virtue of a requirement for approval by a higher authority prior to use. To properly analyze the provisions of Category B, it was necessary to show the levels of approval in the normal conduct of business, and then show the levels of approval upon a declaration of national emergency (Table VIII). The same matrix format used to analyze Category A provisions was utilized to analyze those in Category B.

As shown in Table VIII, twenty-four approval levels for Category B provisions were found, ranging from Congressional approval down to the contracting officer level when viewed across all subject areas. By definition, all Category B provisions required some approval level; therefore, the none category was eliminated from the matrix. In general, only two provisions would require approval above the level of the Secretary of Defense prior

TABLE VIII
CATEGORY B--APPROVAL LEVELS

PRIOR TO NATIONAL EMERGENCY				
	Authority & Procedures	Funding/Cost & Pricing	Socio- economic	Competition/ Sources
Congress	5.0	-	-	8.8
Secretary of Defense	1.4, 50.0	32.5	19.8, 22.1	-
Other Executive Agency	-	13.4	22.10	-
Secretary of the Air Force	1.6, 7.1	32.4, 32.5	-	6.3
Headquarters USAF	33.1	-	-	-
Head of the Contracting Activity	1.4, 7.1	32.3	-	5.5, 6.2, 6.3, 15.1, 16.6
Contracting Officer	-	-	-	6.3

TABLE VIII--Continued

AFTER DECLARATION OF NATIONAL EMERGENCY				
	Authority & Procedures	Funding/Cost & Pricing	Socio- economic	Competition/ Sources
Congress	50.0	-	-	8.8
Secretary of Defense	1.4, 50.0	32.5	19.8, 22.1	-
Other Executive Agency	-	13.4	-	-
Secretary of the Air Force	7.1	32.4, 32.5	-	6.3
Headquarters USAF	33.1	-	-	-
Head of the Contracting Activity	1.4, 1.6, 7.1	32.3	-	5.5, 6.2, 6.3 16.6
Contracting Officer	-	-	22.10	15.1, 6.3

to declaration of a national emergency. The most frequent level of approval for Category B provisions was found to be the head of the contracting activity.

Upon declaration of a national emergency, only three of the twenty-four Category B provision approval levels changed (Subparts 1.6, 5.1, and 22.10). Despite these three changes, the range of approvals was unchanged.

In the subject classification, Authority and Procedures, approval levels were required ranging from Congress to the head of the contracting activity. One of the provisions in this category dealing with contracting authority and responsibility (Subpart 1.6) provided for emergency situations. It is important to note that other provisions in the subject classification contained no contingency delegations, including the extremely important provision on extraordinary contractual actions.

Four provisions in the Funding/Cost and Pricing classification require approvals ranging from other executive agencies and SECDEF to the head of the contracting activity. Specifically, Subpart 13.4 requires the Department of the Treasury approval for emergency imprest funds; approvals for unusual progress payments must be obtained from SECDEF or SECAF depending on the dollar value (Subpart 32.5); advance payments must be approved by SECAF (Subpart 32.4); and loan guarantee certificates of eligibility must be approved by the head of the contracting

activity (Subpart 32.3). No contingency delegations of approval authority were provided.

The Socio-economic subject area contained approval requirements for three provisions. Appeals of set-aside decisions (Subpart 19.8) must be referred to the Secretary of Defense, with no contingency provision for emergencies. Major labor policy decisions (Subpart 22.1), such as plant seizures, must be approved by the Secretary of Defense and have no waiver. Only the requirement to notify the Department of Labor thirty days prior to a solicitation for a wage determination (Subpart 22.10) included a provision for emergency situation. In such a case, the thirty-day requirement need not be complied with.

Category B provisions in the Competition/Sources classification were found to range from the Congressional level to the level of the contracting officer, both before and after a declaration of national emergency. Specifically, the use of printing services other than the Government Printing Office (Subpart 8.8), must be approved by Congress. Other approvals required in this subject classification pertain to FAR Part 6, Competition Requirements. These approvals range from the Secretary of the Air Force to a level immediately above the contracting officer. No contingency delegations were found. Also significant is the authority to approve letter contracts (Subpart 16.6), which contains no delegation. In fact,

of all the required approvals contained in this important subject area, only the requirement for head of contracting agency approval of sole source justifications (Subpart 15.1) was delegated to a lower level, in the event of a national emergency.

Summary. The principal conclusions drawn from this portion of the analysis are based upon the division of the identified provisions into two categories. Those provisions which restricted contractual actions outright were found to contain some form of exception or waiver in most cases. On the other hand, those provisions which required an advance approval to take a course of action, for the most part did not provide for an emergency delegation of that approval authority. No significant difference was observed in the level of approval required, when the categories were compared.

The analysis of the provisions by subject classification yielded an even distribution of provisions, with one significant exception. A large number of Category A, restricted action provisions, were found in the subject area of Competition/Sources. This subject area was found to be heavily regulated, and yet, will need to be extremely flexible if an expedited contracting process is to be achieved.

Research Question Five

Research question five dealt with department and agency directives and regulations, other than the Federal Acquisition Regulation, which may be pertinent to the contracting process in a national emergency/full mobilization situation. The directives and regulations, synopsized in the last section of Chapter IV, covered a variety of acquisition and planning topics including industrial preparedness, loan guarantees, and contingency contracting. Avenues are provided for planning for contracting in an emergency situation. However, the directives and regulations stop short of providing authorities for deviations of restrictive contracting provisions.

Only prior approved deviations from contracting requirements are permitted in the contingency planning process. Since planning responsibility is delegated to the major commands and requires compliance with all applicable laws and executive orders, a considerable gap is evident in some directives and regulations where laws and executive orders are not specifically identified. This is particularly true in the case of AFR 70-7, Contingency Contracting Support Program, when attempting to correlate the laws and executive orders with prior approved deviations.

Expansion of the documents, to include laws and executive orders applicable to each, would be valuable

during major command planning efforts. In addition, the documents require review and updating by the offices of primary responsibility to ensure only the most current information is included. For instance, DOD Directive 4005.1, DOD Industrial Preparedness Production Planning, still contains references to the Armed Services Procurement Regulation.

VI. Summary and Recommendations

Introduction

The purpose of this research effort was to examine current statutes, directives, and regulations; to identify those segments which may impede the contracting process in an emergency; to determine whether an exception or waiver exists for those statutes, directives, and regulations identified; and to ascertain the level of approval of those waivers. The previous chapters provided a background on the research problem, a description of the research methodology, a synopsis of the data considered pertinent to the research problem, and an analysis of that data. This chapter presents a summary of the research effort, some implications of the research findings, and recommendations for further research.

Summary of the Research Effort

The impetus of this research effort was the recognition of a need for more detailed contingency planning in the contracting process. This need was identified in a preliminary investigation on the subject in 1981. This investigation included a review of existing literature and interviews with acquisition managers. The principal conclusions of the 1981 study were a lack of written guidance

pertaining to contracting under emergency conditions, and little or no understanding of what would have to be done in the event of a national emergency (17:1). From this starting point, the research problem was formulated.

The research effort began with an in-depth review of relevant literature. The review of mobilization-related topics confirmed the lack of previous work on the subject of wartime contracting. Having confirmed this effort would not duplicate any previous work, a scenario was designed and specific research questions were developed.

It was recognized that the task at hand was very large, and the principal effort in the research design must be to limit the scope of the research to workable proportions. Therefore, the decision was made that the primary function of this research effort was to be simply a starting point; an identification of the data and its presentation in some workable format. The utter lack of any previous research on the subject made it evident that a data base must be developed before the true scope of the problem would be known.

The research methodology consisted of a subjective review of the principal sources of contracting procedures. The product of this review answers five research questions. The combined objectives of research questions one and two were to identify any acquisition-related legislation that was applicable in a national emergency/full mobilization

environment, and to identify any waivers or exceptions which exist. The product of this portion of the research was an identification of sixty-six segments of United States Code which pertain to contracting and would enhance or impede the contracting process in a national emergency. A synopsis of each statute including any waiver provision was provided in Chapter III. The analysis of this data identified the statutes by subject area and approval level in a matrix format. The results were presented in Tables I through IV, contained in Chapter V.

The objectives of research questions three and four were to identify any pertinent provisions of the Federal Acquisition Regulation and its supplements and to identify any exceptions or waivers and their approval levels. The review of the primary acquisition regulation produced a total of fifty-one requirements considered restrictive to the contracting process. These restrictive provisions were synopsized in Chapter IV, and analyzed in a manner similar to the United States Code citations. The results of the analysis were presented in Tables V through X contained in Chapter V.

The objective of research question five was to identify agency and department directives and regulations pertaining to contracting in a national emergency/full mobilization situation. Six documents were identified and synopsized in Chapter VI. Although the documents

covered several topics applicable to contracting in an emergency situation, the information was in some cases considered shallow and outdated for the intended purpose and required updating.

Implications of the Research

The primary implication of this research is that a significant number of statutory contracting requirements and regulatory contracting procedures do contain restrictions which could impede a streamlined contracting process. The degree of their significance varied, since some of the statutes and regulations addressed obscure and seldom used procedures. Others, however, affect the basic tenants of the Department of Defense acquisition system, such as the means by which we fund the acquisition process, the authority to obligate the Government, and the methods used to select sources. Although it was not a stated objective of this research effort to quantitatively assess the significance of the statutes and regulations identified, it is the opinion of the researchers, that the existence or nonexistence of a waiver or exception, and the level of approval, provide a fair measure of the importance of the portion of contracting guidance identified.

Another consideration derived from this research is the manner by which the statutes and regulations affect the contracting process. Three different categories were

identified. First, the majority of the statutes identified were found to be potential enhancements to the contracting process. For any item in this category, the issue was to determine if a statute's waiver or exception provision would automatically be effective upon a declaration of national emergency and, if not, what action must be taken. None of the exceptions or waivers was found to be automatic upon a declaration of national emergency, but required the President or Congress to specifically state the provisions of law that were to be available for use during the emergency.

The second category identified included provisions which affected the contracting process by restricting courses of action in the acquisition of supplies or services. The need for exception or waiver of these provisions is fairly evident and, in general, some form of relief from the requirements of this type was usually found. The third category encountered was a restriction in the form of a required advance approval to authorize a particular course of action. Requirements of this type were found, with few exceptions, to lack any delegation of authority in the event of an emergency situation, suggesting that this area of the data requires more intensive scrutiny than might otherwise be considered necessary.

The final implication of this research effort is the apparent lack of planning for an expedited contracting

process in the event of a national emergency/full mobilization. This is evident in the absence of literature on the subject, which resulted in the inability of the researchers to present a substantive literature review. It was also evident in the outdated or obsolete condition of most of those directives and regulations which did address contingency contracting activities to some degree.

Recommendations

Replication of this Study. The replication of this study on a periodic basis or, at a minimum, the supplemental updating of this material as changes, additions, or deletions occur, would be most beneficial, ensuring a current data base. The rationale for this recommendation is twofold. First, the Department of Defense procurement process is increasingly under greater scrutiny and direction by those who determine procurement policy and bear the responsibility for its success or failure. In this atmosphere, volatility of change with respect to contracting policies and procedures will be the norm. Second, this research effort was based on a subjective method of data collection. While every effort was made to ensure the completeness of the data, it is entirely possible that future readers of this study may find additional data which correctly warrants inclusion.

Creation of a Contracting Contingency Plan. The data base developed in this research effort can best be used as the foundation of a plan for an expedited contracting process, to be put into effect upon the declaration of a national emergency or full mobilization. Highlights of such a plan would include: (1) consolidated listing of emergency authorities and their level of delegation; (2) standby legislation to be submitted to Congress for consideration, which addresses statutory requirements impeding the contracting process; (3) a compilation of standby blanket waivers of regulatory restrictions; and (4) a guide for contracting officers showing all contingency delegations of approval levels and remaining requirements necessitating individual waivers.

Updating of All Current Contingency Contracting Directives. The directives reviewed in this study showed evidence of dated material, as evidenced by references to the Armed Services Procurement Regulation. While this particular example does not necessarily impair the adequacy of contracting directives, it does imply that current initiatives on the issues raised by this study are lacking.

Concluding Remarks

The implications of this research effort are clear. Restrictions to the contracting process do exist, and will likely be an impediment to a streamlined contracting

process in an emergency situation. Likewise, enhancements to the process also exist; however, no comprehensive body of work has been produced to highlight them.

Planning, by definition, is a continuous process; yet, by virtue of the evidence provided in this study, it is clear that planning for contracting in an emergency environment is sporadic or nonexistent. If this situation remains uncorrected, the Department of Defense acquisition community may find itself unprepared and unable to fulfill its obligation of procuring the necessary supplies and services to successfully prosecute a war. Hopefully, this study will serve as the cornerstone for future planning efforts in this vital area of acquisition support.

Appendix A: United States Code Reference List

<u>Refer- ence Number</u>	<u>Title</u>	<u>Name</u>
1.	10 U.S.C. 2301	Congressional policy on defense procurement
2.	10 U.S.C. 2304	Contracts: competition requirements
3.	10 U.S.C. 2306(f)	Cost and pricing data
4.	10 U.S.C. 2632(a)(2)	Transportation to and from place of work
5.	10 U.S.C. 2663(a), (b), (c)	Acquisition of real property
6.	10 U.S.C. 2664(a), (b), (d), (e)	Acquisition for lumber production
7.	10 U.S.C. 2667(a)	Leases: non-excess property
8.	10 U.S.C. 2672	Acquisition of land
9.	10 U.S.C. 2672a	Acquisition of land
10.	10 U.S.C. 2808	Construction authority
11.	10 U.S.C. 9025	Work hours and pay rates for laborers and mechanics
12.	10 U.S.C. 9501(a), (b), (c), (d)	Industrial mobilization
13.	10 U.S.C. 9502	Industrial mobilization plants
14.	10 U.S.C. 9742	Control of transportation systems
15.	10 U.S.C. 9776	Emergency construction

<u>Refer- ence Number</u>	<u>Title</u>	<u>Name</u>
16.	10 U.S.C. 9780	Acquisition of buildings
17.	15 U.S.C. 631-644	Procurement contracts: small business
18.	15 U.S.C. 2601, 2621	Toxic substance control
19.	16 U.S.C. 1431	Marine sanctuaries
20.	18 U.S.C. 3287	Wartime suspension of limitations
21.	19 U.S.C. 1309 (a)	Supplies for vessels and aircraft
22.	19 U.S.C. 1318	Emergencies
23.	19 U.S.C. 2501-2582	Trade Agreements Act of 1979
24.	29 U.S.C. 206 (e)	Fair Labor Standards Act of 1935
25.	29 U.S.C. 651, 665	Safety and health
26.	29 U.S.C. 793	Employment under Federal contracts
27.	31 U.S.C. 1341	Limitation on expending and obligating amounts
28.	31 U.S.C. 3727	Assignment of claims
29.	33 U.S.C. 1251, 1368	Pollution prevention: navigable waters
30.	33 U.S.C. 1401	Dumping of materials in ocean waters
31.	38 U.S.C. 2012	Veteran's employment under Federal contracts
32.	40 U.S.C. 276a	Wage rates for laborers and mechanics
33.	40 U.S.C. 278a 278b	Lease of buildings

<u>Refer- ence Number</u>	<u>Title</u>	<u>Name</u>
34.	40 U.S.C. 314	Sale of war supplies
35.	40 U.S.C. 328, 331	Exemption to the forty-hour work week
36.	41 U.S.C. 11-12	Authority to contract
37.	41 U.S.C. 15	Transfer of contracts; assignment of claims; set-offs
38.	41 U.S.C. 48	Blind and severely handicapped purchases
39.	41 U.S.C. 351-356	Service contract labor standards
40.	41 U.S.C. 601-605	Contract Disputes Act
41.	42 U.S.C. 300f-300j-6	Public health and welfare; public water systems
42.	42 U.S.C. 4901, 4903	Public health and welfare; noise
43.	42 U.S.C. 6901	Solid waste disposal
44.	42 U.S.C. 7401	Clean air
45.	43 U.S.C. 1314	Purchase of natural resources
46.	43 U.S.C. 1341	Withdrawal of unleased lands
47.	44 U.S.C. 501, 502, 504	Government printing
48.	46 U.S.C. 1241	Transportation on U.S. flag vessels
49.	46 U.S.C. 1282, 1285	Authority to provide insurance
50.	50 U.S.C. 82	Procurement of materials; changes to contracts

<u>Refer- ence Number</u>	<u>Title</u>	<u>Name</u>
51.	50 U.S.C. 98, 98a, 98f	Strategic raw materials
52.	50 U.S.C. 451-453	Defense industrial reserves
53.	50 U.S.C. 1431 1435	National defense contracts
54.	50 U.S.C. 1601	Termination of existing declared emergencies
55.	50 U.S.C. 1621	Declaration of a national emergency
56.	50 U.S.C. 1622	National emergencies; terminations
57.	50 U.S.C. 1631	Exercise of emergency powers and authorities
58.	50 U.S.C. 1641	Accountability and reporting by the President
59.	50 U.S.C. 1651	Application to other provisions of law
60.	50 U.S.C. App. 10(c)	Use of enemy patents, copyrights, or trade- marks
61.	50 U.S.C. App. 468	Placement of orders
62.	50 U.S.C. App. 2061, 2062	Defense Production Act of 1950: Policy
63.	50 U.S.C. App. 2071	Priority in contracts and orders
64.	50 U.S.C. App. 2091	Loan guarantees
65.	50 U.S.C. App. 2092	Loans to private enterprises
66.	50 U.S.C. App. 2168	Cost Accounting Standards

Appendix B: Federal Acquisition Regulation Clauses

	<u>FAR Reference</u>	<u>Provision Title</u>
1.	52.204-1	Approval of Contract
2.	52.208-1	Required Sources for Jewel Bearing and Related Items
3.	52.214.28	Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding
4.	52.215-21	Changes or Additions to Make-or- Buy Program
5.	52.215-24	Subcontractor Cost and Pricing Data
6.	52.215-25	Subcontractor Cost and Pricing Data - Modifications
7.	52.216.4	Economic Price Adjustment - Labor and Materials
8.	52.217-9	Option to Extend the Term of the Contract - Services
9.	52.219-9	Small Business and Small Disad- vantaged Business Subcontracting Plan
10.	52.219-11	Special 8(a) Contract Conditions
11.	52.222-20	Walsh-Healy Public Contracts Act
12.	52.222-21	Certification of Nonsegregated Facilities
13.	52.222-23	Notice of Requirement for Affirma- tive Action to Ensure Equal Employ- ment Opportunity
14.	52.222-24	Preaward On-Site Equal Opportunity Compliance Review

	<u>FAR Reference</u>	<u>Provision Title</u>
15.	52.222-26	Equal Opportunity
16.	52.222-28	Equal Opportunity Preaward Clearance of Subcontractors
17.	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans
18.	52.222-36	Affirmative Action for Handicapped Workers
19.	52.223-2	Clean Air and Water
20.	52.225-3	Buy America Act - Supplies
21.	52.225-7	Balance of Payments Program
22.	52.225-9	Buy America Act - Trade Agreements Act - Balance of Payments Program
23.	52.225-10	Duty - Free Entry
24.	52.225-11	Certain Community Areas
25.	52.230-1	Cost Accounting Standards Notices and Certification (National Defense)
26.	52.230-3	Cost Accounting Standards
27.	52.230-4	Administration of Cost Accounting Standards
28.	52.232-18	Availability of Funds
29.	52.232-19	Availability of Funds for the Next Fiscal Year
30.	52.232-20	Limitation on Cost
31.	52.232-21	Limitation on Cost (Facilities)
32.	52.232-22	Limitation on Funds
33.	52.233-1	Disputes
34.	52.244-1	Subcontracts Under Fixed-Price Contracts

	<u>FAR Reference</u>	<u>Provision Title</u>
35.	52.244-2	Subcontracts Under Cost-Reimbursement and Letter Contracts
36.	52.244-3	Subcontracts Under Time-and-Materials and Labor-Hour Contracts
37.	52.244-4	Subcontracts and Outside Associates and Consultants

	<u>DFARS Reference</u>	<u>Provision Title</u>
38.	52.208-7000	Required Sources for Miniature and Instrument Ball Bearings
39.	52.208-7001	Required Sources for Precision Components for Mechanical Time Devices
40.	52.208-7002	Required Sources for High-Purity Silicon
41.	52.208-7003	Required Sources for High-Carbon Ferrochrome
42.	52.222-7000	Potential Application of the Service Contract Act, As Amended (Fixed Price)
43.	52-225-7001	Buy American Act and Balance of Payments Program
44.	52.225-7006	Buy American Act, Trade Agreements Act, and the Balance of Payments Program
45.	52.225-7009	Preference for Certain Domestic Commodities
46.	52.225-7010	Domestic Wool Preference
47.	52.225-7011	Preference for Domestic Specialty Metals (Major Programs)
48.	52.225-7012	Preference for Domestic Specialty Metals

	<u>DFARS Reference</u>	<u>Provision Title</u>
49.	52.225-7013	Preference for Domestic Hand or Measuring Tools
50.	52.227-9000	Expiration of Limited/Restricted Rights
51.	52.247-7005	Termination

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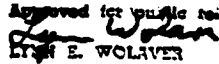
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The declaration of a national emergency by the President or Congress will undoubtedly create urgent demands for supplies and services to be provided by the Department of Defense acquisition community. It has become apparent that DOD contracting functions may be incapable of expediting the contracting process to meet the demand. Large numbers of statutes, regulations, and directives contain restrictions that may impede the contracting process, but the nature and extent of these restrictions have never been consolidated into a single body of material.

The objectives of this ^{H.A.S.S.} ~~research effort~~ were:
(1) to identify any statutes, regulations, or directives which might impede the contracting process, in the event of a national emergency/full mobilization; (2) to determine the existence of any waivers to the restrictions identified; and (3) to establish the level of approval of any existing waivers.

A subjective review of United States Code, the Federal Acquisition Regulation, and Defense and Air Force acquisition-related directives and regulations was accomplished. A total of 126 provisions were identified as potential impediments to the contracting process, requiring waiver approvals ranging from Congress to the contracting officer, if a waiver was found to exist. Based on these findings, several recommendations were made pertaining to Department of Defense contracting contingency planning.

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